



NUMBER 13-19-00338-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JEROME LEWIS LEITA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 24th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion by Chief Justice Contreras**

Appellant Jerome Lewis Leita appeals from the revocation of his community supervision. By one issue, appellant argues that the trial court erred when it admitted hearsay testimony. We affirm as modified.

I. BACKGROUND

In May 2016, appellant was indicted for aggravated assault with a deadly weapon, a first-degree felony, and tampering with a witness, a third-degree felony. See TEX. PENAL CODE ANN. §§ 22.02, 36.05. Appellant entered into a plea agreement with the State, pleaded guilty to the aggravated assault offense, and the State dismissed the tampering with a witness charge. The trial court accepted the agreement and placed appellant on deferred adjudication community supervision for seven years.

In January 2019, the State filed a motion to revoke and adjudicate guilt alleging appellant violated multiple conditions of his supervision. Specifically, the State alleged that appellant: (1) committed two new criminal offenses in Horry County, South Carolina on November 30, 2018; (2) failed to stay away from places that sell alcohol and failed to refrain from consuming synthetic marijuana; (3) left Texas without permission; (4) failed to report to his supervision officer in November 2018; (5) failed to pay \$382 in supervision fees; and (6) failed to pay \$166 in fines.¹ Appellant pleaded not true to the allegations.

At the hearing on the motion, the State presented testimony from Allan Huggins, a South Carolina police officer, and Matt Rauch, appellant's probation officer. Huggins testified about appellant's arrest in South Carolina and the new offenses appellant was accused of committing there during his arrest as a fugitive. Specifically, Huggins testified that appellant caused \$5,000 worth of damage to his police vehicle when he intentionally backed his car into Huggins's vehicle as he attempted to escape. At the end of Huggins's testimony, the State inquired about comments the passenger in appellant's car made to

¹ Appellant was accused of committing "Malicious/Malicious Injury to Animal/Personal Property" and "Injury Value More than \$2,000 but less than \$10,000" in South Carolina. The State also alleged that appellant committed a new criminal offense of theft in Calhoun County, Texas on August 27, 2018; however, the State abandoned that allegation at the hearing on the motion.

Huggins, and appellant objected on the basis of hearsay. The trial court overruled the objection. Rauch testified that appellant traveled to South Carolina without permission from the supervision department, was arrested in South Carolina, failed to report in November of 2018, and did not make payments towards his supervision fees and fines after July 5, 2018.

The trial court found all the allegations to be true except for the allegation that appellant consumed synthetic marijuana and failed to stay away from places that sold alcohol. The trial court adjudicated appellant guilty of the offense and assessed punishment at twenty years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice. This appeal followed.

II. DISCUSSION

By his first issue, appellant argues that the trial court erred when it overruled his hearsay objection.

A. Standard of Review

We review a trial court's order revoking community supervision for an abuse of discretion. *Martinez v. State*, 563 S.W.3d 503, 510 (Tex. App.—Corpus Christi—Edinburg 2018, no pet.). The trial court abuses its discretion if its decision falls outside a zone of reasonable disagreement. See *Buntion v. State*, 482 S.W.3d 58, 71 (Tex. Crim. App. 2016). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated a condition of community supervision as alleged in the motion to revoke. *Cobb v. State*, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993); see *Rickels v. State*, 202 S.W.3d 759, 763–64 (Tex. Crim. App. 2006). The preponderance of the evidence standard is met when the greater weight of the credible evidence before the

trial court supports a reasonable belief that a condition of community supervision has been violated. *Rickels*, 202 S.W.3d at 763–64; *Scamardo v. State*, 517 S.W.2d 293, 298 (Tex. Crim. App. 1974). Proof of a single violation is sufficient to support a revocation. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012).

B. Analysis

To prevail on appeal, appellant was required to successfully challenge all of the findings that support the revocation order. See *id.* Here, the trial court found several grounds in support of revocation apart from those to which Officer Huggins testified. For example, appellant’s community supervision officer testified, and the trial court found, that appellant violated a condition of his supervision when he failed to: report in November of 2018, pay supervision fees, and pay his fine. Appellant does not challenge these findings, and any of these findings is sufficient to support the revocation order. See *Gipson v. State*, 428 S.W.3d 107, 109 (Tex. Crim. App. 2014); *Garcia*, 387 S.W.3d at 26; *Martinez v. State*, 563 S.W.3d at 514–15. Accordingly, even if the trial court abused its discretion by overruling his hearsay objection, that error would not be reversible.² See TEX. R. APP. P. 44.2(b) (providing that we must “disregard” non-constitutional error that does not affect appellant’s substantial rights).

We overrule appellant’s sole issue.

C. Modification of Judgment

The State requests that we modify the judgment to reflect the findings as pronounced by the trial court at the hearing.

² Hearsay is an out of court statement offered “in evidence to prove the truth of the matter asserted in the statement.” See TEX. R. EVID. 801(d).

On review of the record, we observe that the written judgment contained a non-reversible clerical error. Page 1 of the judgment states that the trial court found that appellant violated the conditions of his community supervision “as set out in the State’s Original Motion to Adjudicate Guilt, as follows: #8, #18, & #11.” However, the trial court announced at the hearing that it also found allegation # 1—that appellant committed a new criminal offense—to be true.

This Court has the authority to modify incorrect judgments when the necessary information is available to do so. See TEX. R. APP. P. 43.2(b) (authorizing a court of appeals to modify a judgment and affirm as modified); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); see also *Cantu v. State*, No. 13-17-00360-CR, 2018 WL 2440381, at *2 (Tex. App.—Corpus Christi–Edinburg May 31, 2018, no pet.) (mem. op., not designated for publication) (modifying the judgment to accurately reflect the community supervision violations found by the trial court as pronounced at the hearing). Accordingly, we modify the judgment of conviction to reflect the accuracy of the trial court’s findings regarding the violations of community supervision.

III. CONCLUSION

The trial court’s judgment is affirmed as modified.

DORI CONTRERAS
Chief Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
28th day of May, 2020.