



NUMBERS 13-19-00450-CR & 13-19-00451-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

AARON TERRY,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Benavides**

In October 2016, appellant Aaron Terry pleaded guilty to one count of escape, a third-degree felony and separately pleaded guilty to a single count of tampering with physical evidence, also a third-degree felony.¹ See TEX. PENAL CODE ANN. § 37.09(d),

¹ The appeal arising out of the adjudication and sentence for escape is appellate cause No. 13-19-00450-CR. The appeal arising from the tampering adjudication and sentence is appellate cause No. 13-19-00451-CR. All pending motions in both cases are dismissed as moot.

38.06(c). Both resulted in deferred adjudication community supervision for five years each. By a single issue, appellant Terry appeals from the trial court's adjudication of his guilt and concurrent sentences of seven years' imprisonment in the Texas Department of Criminal Justice—Institutional Division. We affirm in both causes.

I. BACKGROUND

Among the conditions of Terry's deferred adjudication community supervision in each case were requirements that he serve a term of confinement and treatment in a "special needs" substance abuse felony punishment facility, go to a halfway house afterwards, as well as other standard conditions of reporting and payment of fees and fines. Terry was placed on the substance abuse specialized caseload and ordered to participate in a cognitive retraining program.

Terry completed the inpatient rehabilitation but the State alleged that he absconded from the halfway house, alleged that he failed to attend any of the cognitive retraining, failed to report to his probation officer, and failed to pay his fees and fines. In addition, Terry was charged with additional low-level substance abuse offenses. The State filed a motion to revoke² in May 2019, along with a motion to adjudicate guilt in both cases.

Terry was given written notice of the alleged violations of his community supervision, appointed counsel, given notice of the hearing, and appeared in person with counsel at the hearing. He was admonished that if he pleaded true to a violation, the trial court could find the violation true because he had admitted his violation. Terry was asked

² The State filed two previous motions to revoke. One resulted in amended conditions of supervision in November 2017. After the second motion to revoke, Terry was continued on supervision but required to return to an inpatient substance abuse facility in May 2018.

if he understood the admonishments, whether he and his lawyer had discussed the allegations, and the effect of his plea and if he understood. Terry responded “yes” to each question and pleaded true to all the alleged violations. The trial court then asked for recommendations. The presentence investigation report (PSI) was admitted into evidence that identified Terry’s previous convictions which included two previous burglary of buildings and one burglary of a habitation. The report indicated that Terry was abused as a child and has been diagnosed with and treated for numerous mental health problems in addition to substance abuse. The trial court agreed to grant jail credit for all of Terry’s inpatient treatment which in appellate cause No. 13-19-00450-CR totaled 851 days and was greater in appellate cause No. 13-19-00451-CR.

Terry argued that he was now a better candidate for probation because he was presently living in Beeville, not Tuleta, and transportation to programs would not be as big a problem for him and he was eager for more treatment despite his relapse. The State and probation argued for adjudication and sentencing. The trial court adjudicated guilt on both cases and sentenced Terry to seven years’ imprisonment for each to run concurrently.

II. REVOCATION

Terry’s single issue is: whether “any error occurred during the hearing on the motion to adjudicate and imposition of sentence based upon alleged failure to complete designated mental health programs and other reporting violations during a five (5) year period of deferred adjudication?”

A. Standard of Review

We review a trial court’s decision to revoke deferred adjudication community

supervision for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984); *Lawrence v. State*, 420 S.W.3d 329, 331 (Tex. App.—Fort Worth 2014, pet. ref'd). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated at least one of the terms and conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 873–74 (Tex. Crim. App. 1993). Proof of a violation of one condition of community supervision is sufficient to support the trial court's decision to revoke. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012). The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial court's ruling. *Cardona*, 665 S.W.2d at 493. If the State fails to meet its burden of proof, the trial court abuses its discretion in revoking the community supervision. *Id.* at 493–94.

B. Discussion

Terry admitted that he was the person on community supervision and that all the allegations were true. This was his third motion to revoke after previous sanctions, including inpatient and outpatient treatment, had not worked. The trial court adjudicated his guilt and sentenced him within the applicable punishment range for a third-degree felony in both cases. See TEX. PENAL CODE ANN. § 12.34(a) (stating a penalty range of two to ten years for a third-degree felony).

Sentencing is within the sound discretion of the trial court, and we review the sentence imposed by a trial court for an abuse of discretion. *Jackson v. State*, 680 S.W.2d 809, 814 (Tex. Crim. App. 1984); *Baldrige v. State*, 77 S.W.3d 890, 893–94 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd); see also *Garcia v. State*, No. 13-10-00148-CR, 2011

WL 2585965, at *1 (Tex. App.—Corpus Christi—Edinburg June 30, 2011, no pet.) (mem. op., not designated for publication). Where deferred adjudication probation is revoked, the trial court is not limited to imposing the original term recommended but may impose any term authorized by statute. *Von Schounmacher v. State*, 5 S.W.3d 221, 223 (Tex. Crim. App. 1999). As a rule, a penalty assessed within the proper punishment range will not be disturbed on appeal. *Jackson*, 680 S.W.2d at 814; see also *Garcia*, 2011 WL 2585965, at *1.

The record before the trial court reflected Terry’s multiple efforts on community supervision, which had been mostly unsuccessful as soon as he was outside of a locked unit. In addition to violating the terms of his supervision, Terry committed new offenses and did not keep up with his mental health medication or counseling. We do not find any basis for a claim of abuse of discretion by the trial court in sentencing.

Accordingly, we overrule Terry’s sole issue.

III. CONCLUSION

We affirm the judgments of the trial court.

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
23rd day of July, 2020.