NUMBERS 13-20-00071-CR & 13-20-00073-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

OSCAR ARMANDO RIOS, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 105th District Court
of Kleberg County, Texas.

MEMORANDUM OPINION

Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Hinojosa

By two issues, appellant Oscar Armando Rios contends the trial court erred at his community supervision revocation hearing when it found that (1) the violation Rios contended was "not true" was "true" by a preponderance of the evidence and (2) that the seven-year prison term assessed for violating his community supervision was disproportionate to the seriousness of his alleged offenses in violation of the Eighth and

Fourteenth Amendments of the United States Constitution. *See* U.S. CONST. amends. VIII, XIV. We affirm.

I. BACKGROUND

In this consolidated appeal, Rios challenges his sentences from two convictions. In the first conviction, trial court cause number 11-CRF-0613, Rios pleaded guilty to possession of a controlled substance, penalty group 1, of more than four grams but less than two hundred grams with intent to deliver, a first-degree felony. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112. On December 4, 2015, the trial court sentenced Rios to ten years' probation on this offense under deferred adjudication. The State filed a motion to revoke Rios's community supervision on February 6, 2018, but after a hearing on the State's motion, the court kept him on deferred adjudication under amended supervision conditions.

In the second conviction, trial court cause number 17-CRF-0317, Rios pleaded guilty to assault on a family member by impeding airway, a third-degree felony.[1] *See* TEX. PENAL CODE ANN. § 22.01. On March 8, 2018, the trial court placed Rios on seven years' deferred adjudication community supervision, to run concurrent with his existing case. On August 12, 2019, the State filed a motion to revoke in this case too, but the trial court continued Rios on community supervision with amended conditions.

The State filed a second motion to revoke in each case. On November 4, 2019, in trial court cause number 11-CRF-0613, the State alleged that Rios violated fifteen

[1] For reference, trial court cause number 11-CRF-0613 is appellate cause number 13-20-00071-CR, and trial court cause number 17-CRF-0317 is appellate cause number 13-20-00073-CR.

conditions of his community supervision, including: failure to abide by a Zero Tolerance Supervision condition; committing the offense of attempted retaliation on or about September 13, 2019 in Kleberg County, Texas; failing to avoid persons of disreputable or harmful character; and failing to pay monthly supervision fees, supervision fee arrearages, court costs, fines, storage fees, drug analysis fees, time payment fees, attorney's fees, crime stoppers fees, PSI fee arrearages, victims' compensation fees, and urinalysis test fees.

In trial court cause number 17-CRF-0317, the State alleged four violations: counts one and two alleged that Rios failed to avoid communication with persons of disreputable or harmful character; count three alleged that he committed the offense of attempted retaliation on or about September 13, 2019 in Kleberg County, Texas; and count four claimed he failed to abide by the Zero Tolerance Supervision condition.

At a revocation hearing for both cases on November 12, 2019, Rios pleaded "not true" to the allegation that he committed the offense of attempted retaliation, and "true" to the remaining violations in each of the motions. *See* TEX. PENAL CODE ANN. § 36.06 (providing that it is a third-degree felony if a person intentionally or knowingly harms or threatens to harm another in retaliation for or on account of the service of another as a witness or prospective witness). The State presented evidence to substantiate this attempted retaliation claim, which was targeted against Rios's ex-wife. The trial court subsequently found all of the allegations "true," revoked Rios's probation on both cases, and sentenced him to seven years' incarceration in the Texas Department of Criminal Justice—Institutional Division, with the sentences ordered to run concurrently. Rios

appeals.

II. VIOLATIONS OF COMMUNITY SUPERVISION CONDITIONS

A. Standard of Review and Applicable Law

"To convict a defendant of a crime, the State must prove guilt beyond a reasonable doubt, but to revoke probation (whether it be regular probation or deferred adjudication), the State need prove the violation of a condition of probation only by a preponderance of the evidence." *Hacker v. State*, 389 S.W.3d 860, 864–65 (Tex. Crim. App. 2013). "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." *Martinez v. State*, 563 S.W.3d 503, 510 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.). Where the State presents multiple grounds for revocation, "a trial court is authorized to revoke community supervision and proceed to adjudication so long as the State has established at least one of the violations it has alleged." *See Dansby v. State*, 398 S.W.3d 233, 241 (Tex. Crim. App. 2013); *see also Perez v. State*, No. 13-14-00300-CR, 2015 WL 4234236, at *4 (Tex. App.—Corpus Christi–Edinburg July 9, 2015, no pet.) (mem. op., not designated for publication).

The trial judge is the sole judge of the credibility of the witnesses and the weight to be given to their testimony, and we review a trial court's order revoking community supervision for an abuse of discretion. *See Carreon v. State*, 548 S.W.3d 71, 77 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.) (citing *Hacker*, 389 S.W.3d at 865–66).

B. Analysis

By his first issue, Rios challenges the trial court's finding of "true" to the allegation

that he committed the felony of attempted retaliation, but he does not challenge the remainder of the conditions to which he pleaded "true." Because at least one violation exists to support the order revoking community supervision, we need not decide whether error occurred with respect to the challenged violation. *See Garcia v. State,* 387 S.W.3d 20, 26 (Tex. Crim. App. 2012); *Sterling v. State,* 791 S.W.2d 274, 277 (Tex. App.—Corpus Christi–Edinburg 1990, pet. ref'd) (requiring that to obtain reversal of a revocation order, appellant must successfully challenge each and every ground on which the trial court relied to support revocation); *Perez*, 2015 WL 4234236, at *4 (same). We overrule this issue.

III. DISPROPORTIONATE SENTENCING

A. Standard of Review and Applicable Law

By his second issue, Rios contends that the seven-year prison sentence assessed for each case is excessive and in violation of the Eighth and Fourteenth Amendments to the United States Constitution. *See* U.S. CONST. amends. VIII, XIV.

An allegation of excessive or disproportionate punishment is a legal claim "embodied in the Constitution's ban on cruel and unusual punishment" and based on a "narrow principle that does not require strict proportionality between the crime and the sentence." *State v. Simpson*, 488 S.W.3d 318, 322–24 (Tex. Crim. App. 2016) (citing *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991)); *see* U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); *see also Meadoux v. State*, 325 S.W.3d 189, 193 (Tex. Crim. App. 2010) (acknowledging that the Eighth Amendment is applicable to the states by

virtue of the Fourteenth Amendment (citing *Robinson v. California,* 370 U.S. 660, 666–67 (1962)). A successful challenge to proportionality is exceedingly rare and requires a finding of "gross disproportionality." *Simpson*, 488 S.W.3d at 322–23 (citing *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003)); *Trevino v. State*, 174 S.W.3d 925, 928 (Tex. App.—Corpus Christi–Edinburg 2005, pet. ref'd) (providing that a sentence is unlikely to be disturbed on appeal if it is assessed within the legislatively determined range).

To preserve for appellate review a complaint that a sentence is grossly disproportionate or constituting cruel and unusual punishment, however, a defendant must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling desired. *See* TEX. R. APP. P. 33.1(a); *Smith v. State*, 721 S.W.2d 844, 855 (Tex. Crim. App. 1986); *Navarro v. State*, 588 S.W.3d 689, 690 (Tex. App.—Texarkana 2019, no pet.) (holding that to preserve a disproportionate-sentencing complaint, the defendant must make a timely, specific objection in trial court or raise the issue in a motion for new trial); *Toledo v. State*, 519 S.W.3d 273, 284 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd) (same).

B. Analysis

Rios did not object in the trial court that the sentence imposed by the trial court was disproportionate to the offense charged or in violation of his constitutional rights. *See* U.S. CONST. amends. VIII, XIV. Accordingly, we hold that Rios failed to preserve this complaint for our review. *See Smith*, 721 S.W.2d at 855; *Trevino*, 174 S.W.3d at 927–28 ("Because the sentence imposed is within the punishment range and is not illegal, we conclude that the rights [appellant] asserts for the first time on appeal are not so

fundamental as to have relieved him of the necessity of a timely, specific trial objection.”).

We overrule Rios’s second point of error.

IV. CONCLUSION

Having overruled both of Rios’s issues on appeal, we affirm the trial court’s judgment.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
27th day of August, 2020.