

NO. 12-11-00043-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JOHNATHAN LEE ADCOCK, § *APPEAL FROM THE SECOND*
APPELLANT

V. § *JUDICIAL DISTRICT COURT*

THE STATE OF TEXAS, § *CHEROKEE COUNTY, TEXAS*
APPELLEE

MEMORANDUM OPINION

Jonathan Lee Adcock appeals the revocation of his deferred adjudication community supervision, following which he was sentenced to imprisonment for two years. Appellant raises four issues on appeal. We modify and, as modified, affirm.

BACKGROUND

Appellant was charged by indictment with criminal mischief and pleaded “guilty.” The trial court deferred finding Appellant “guilty” and placed him on community supervision for five years.

On August 19, 2010, the State filed a motion to proceed to final adjudication alleging that Appellant had violated certain conditions of his community supervision. Specifically, the State argued that Appellant committed the offense of driving while intoxicated. The trial court conducted a hearing on the State’s motion. At the hearing, Appellant pleaded “true” to the allegations in the State’s motion. Thereafter, the trial court found the allegations in the State’s motion to be “true,” revoked Appellant’s community supervision, adjudicated Appellant “guilty” of criminal mischief, and sentenced Appellant to imprisonment for two years. This appeal followed.

EVIDENTIARY SUFFICIENCY TO SUPPORT REVOCATION OF COMMUNITY SUPERVISION

In his first issue, Appellant contends that the trial court erred in revoking his community supervision because the evidence is insufficient to support the revocation. The only question presented in an appeal from an order revoking community supervision is whether the trial court abused its discretion in revoking the defendant's community supervision. See *Lloyd v. State*, 574 S.W.2d 159, 160 (Tex. Crim. App. [Panel Op.] 1978). The standard of proof in a revocation proceeding is a preponderance of the evidence. *Id.* In order to satisfy its burden of proof, the State must prove that the greater weight of the credible evidence before the trial court creates a reasonable belief that a condition of community supervision has been violated as alleged in the motion to revoke. See *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993).

In the instant case, Appellant pleaded "true" to the allegations in the State's motion including the allegation that he committed the offense of driving while intoxicated. A plea of true to any one of the alleged violations contained in a motion to revoke is sufficient to support the trial court's order revoking community supervision. See *Moore v. State*, 11 S.W.3d 495, 498 n.1 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Once a plea of "true" has been entered, a defendant may not challenge the sufficiency of the evidence to support the subsequent revocation. *Id.* (citing *Rincon v. State*, 615 S.W.2d 746, 747 (Tex. Crim. App. [Panel Op.] 1981); *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979); *Hays v. State*, 933 S.W.2d 659, 661 (Tex. App.—San Antonio 1996, no pet.)). Therefore, since Appellant pleaded "true" to the State's allegations in its motion, he may not challenge the sufficiency of the evidence to support the trial court's revocation of his community supervision. Accordingly, we hold that the trial court did not abuse its discretion in revoking Appellant's community supervision. Appellant's first issue is overruled.

RESTITUTION AND ATTORNEY'S FEES

In his second issue, Appellant contends that the trial court erred in ordering that he pay \$3,349.00 in restitution because it failed to assess restitution in its oral pronouncement of sentence. In his fourth issue, Appellant contends that the trial court erred in ordering that he pay court appointed attorney's fees because it failed to assess these fees in its oral pronouncement of sentence.

When there is a variation between the oral pronouncement of sentence and the written

memorialization of the sentence, the oral pronouncement controls. *Coffey v. State*, 979 S.W.2d 326, 328 (Tex. Crim. App. 1998). Here, the State concedes that the trial court erred in assessing restitution and attorney's fees in the judgment of conviction where no restitution or attorney's fees were assessed in the trial court's oral pronouncement of sentence. Accordingly, we hold that the trial court's written judgment should be reformed to comport with its oral pronouncement of sentence. Appellant's second and fourth issues are sustained.¹

CONCLUSION

We have sustained Appellant's second and fourth issues and overruled his first issue. Having done so, we *modify* the trial court's judgment by deleting the order that Appellant pay restitution in the amount of \$3,349.00 and by deleting the order that Appellant pay court appointed attorney's fees. We *affirm* the trial court's judgment as modified.

JAMES T. WORTHEN
Chief Justice

Opinion delivered September 7, 2011.
Panel consisted of Worthen, C.J., Griffith, and Hoyle, J.

(DO NOT PUBLISH)

¹ Because we have sustained Appellant's second issue, we do not reach his third issue concerning whether the amount of restitution ordered lacks evidentiary support.