NOS. 12-11-00143-CR
12-11-00146-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

RAFAEL ENRIQUE HENRIQUEZ, APPELLANT	***§***	***APPEALS FROM THE 7TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Rafael Enrique Henriquez appeals his convictions for possession of marijuana in a drug free zone and possession of a controlled substance (methamphetamine) in a drug free zone. He raises three issues on appeal. We modify the judgment and affirm as modified.

BACKGROUND

In 2010, Appellant was stopped on a traffic violation by law enforcement officials. While Appellant was detained, the officers discovered that he possessed marijuana and methamphetamine and was in a drug free zone. He was arrested and indicted for the offenses and pleaded "guilty" to both offenses.

At trial, Appellant admitted that he was not a United States citizen, and the trial court informed him that a plea and finding of "guilty" could cause him to be deported and prevented from reentering the country. He was also advised that if he was here on a form of travel "visa," that "visa" could be denied or not extended. Finally, Appellant was told by the trial court that his plea and a finding of "guilt" could prevent him from obtaining naturalized citizenship.

For the marijuana conviction, a third degree felony as alleged in the indictment, the trial

court sentenced Appellant to ten years of imprisonment, suspended for a five year community supervision period. For the controlled substance conviction, a second degree felony, Appellant was sentenced to ten years of imprisonment, suspended for a ten year supervision period.

During the trial, and continuously after being placed on community supervision, Appellant was detained by United States Immigrations and Customs Enforcement (ICE) officials due to an immigration "hold." Appellant was in ICE custody from August 16, 2010, until October 1, 2010, when he was deported to El Salvador.

In 2011, Appellant reentered the United States and was located in Penitas, Texas. ICE officials arrested him for the illegal reentry, and he received a federal ninety day prison sentence and a three year supervision period due to his reentry.

The State learned of this disposition, and consequently, in April 2011, filed an application to revoke Appellant's community supervision for each of his drug convictions. In the applications, the State alleged that Appellant failed to comply with the terms of his community supervision in the following respects: (1) he failed to obey the law when he reentered the country illegally, (2) he failed to pay a $20.00 per month court cost reimbursement fee in September through November 2010, (3) he failed to pay $15.00 for the cost of the Substance Abuse Questionnaire (SAQ), (4) he failed to report by mail in September through November 2010, and (5) he failed to comply with a special condition of his community supervision that prevented him from reentering the county illegally. The application for the controlled substance offense included the additional allegation that Appellant failed to pay a $60.00 per month supervision fee in September through November 2010.

Appellant pleaded "true" to all of the allegations in the State's applications and executed a document entitled "Written Plea Admonishments and Stipulation of Evidence." After accepting Appellant's plea and finding the allegations in the State's applications to be true, the trial court sentenced Appellant to four years of imprisonment on each offense, to be served concurrently. This appeal followed.

COMMUNITY SUPERVISION

In his first issue, Appellant argues that "the trial court erred in revoking Appellant for failure to obtain legal immigration status because the trial court had no federal immigration authority under the Supremacy Clause of the United States Constitution." In his second issue,

Appellant contends that "the trial court erred in revoking Appellant's community supervision for Appellant's failure to leave the country and to report from Mexico, because the condition was void for violating the prohibition against outlawry of the Texas Constitution and the Code of Criminal Procedure." Because these two issues are related, we address them together.

Standard of Review and Applicable Law

The granting of community supervision is a contractual privilege afforded a defendant whereby the court agrees to extend clemency by granting community supervision in exchange for the defendant's agreement to abide by certain requirements. ***Speth v. State***, 6 S.W.3d 530, 533–34 (Tex. Crim. App. 1999). A trial court has broad discretion to determine the terms and conditions of community supervision to be imposed. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 11(a) (West Supp. 2011) ("The judge may impose any reasonable condition [of community supervision] that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant."); ***Speth***, 6 S.W.3d at 533.

"At a hearing on an application to revoke [community supervision], guilt or innocence is not at issue, and the trial court need not determine the defendant's original criminal culpability, only whether the [defendant] broke the contract made with the trial court to receive [community supervision]." ***Pierce v. State***, 113 S.W.3d 431, 436 (Tex. App.—Texarkana 2003, pet. ref'd).

In community supervision revocation cases, the state has the burden to establish by a preponderance of the evidence that the terms and conditions of community supervision have been violated. ***Cardona v. State***, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). 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 v. State***, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006).

When the state has met its burden of proof and no procedural obstacle is raised, the decision whether to revoke community supervision is within the discretion of the trial court. ***Flournoy v. State***, 589 S.W.2d 705, 708 (Tex. Crim. App. 1979). Thus, our review of the trial court's order revoking community supervision is limited to determining whether the trial court abused its discretion. ***Caddell v. State***, 605 S.W.2d 275, 277 (Tex. Crim. App. 1980). When a trial court finds several violations of community supervision conditions, we affirm the revocation order if the proof of any single allegation is sufficient. *See* ***Hart v. State***, 264 S.W.3d 364, 367 (Tex. App.—Eastland 2008, pet. ref'd); ***Cochran v. State***, 78 S.W.3d 20, 28 (Tex. App.—Tyler

2002, no pet.). In other words, if there is some evidence to support the finding of even a single violation, the revocation order must be upheld. ***Id.*** (citing ***Moore v. State***, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980)). A plea of "true," standing alone, is sufficient to support a revocation of probation. ***Moses v. State***, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979); ***Cole v. State***, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979). Indeed, an appellant cannot question the sufficiency of the evidence underlying the decision once he has pleaded "true." *See* ***Cole***, 578 S.W.2d at 128; ***Moore v. State***, 11 S.W.3d 495, 498 n.1 (Tex. App.–Houston [14th Dist.] 2000, no pet.).

Similar to the traditional legal sufficiency analysis, we view the evidence in the light most favorable to the trial court's decision to revoke. ***Hart***, 264 S.W.3d at 367. Moreover, in a revocation proceeding, the trial judge is the sole trier of the facts, the credibility of the witnesses, and the weight to be given to the witnesses' testimony. ***Diaz v. State***, 516 S.W.2d 154, 156 (Tex. Crim. App. 1974); ***Aguilar v. State***, 471 S.W.2d 58, 60 (Tex. Crim. App. 1971).

Discussion

Appellant contends that the issues he raises here were recently resolved in an opinion issued by the Texarkana court of appeals in a similar case. *See generally* ***Gutierrez v. State***, 354 S.W.3d 1 (Tex. App.—Texarkana 2011, pet. granted). In ***Gutierrez***, the court held that the trial court could not revoke the defendant's community supervision based on the failure to comply with the condition of supervision that she failed to leave the United States after not obtaining legalized immigration status by a stated deadline, because the condition was void for intruding upon the federal government's exclusive jurisdiction to regulate immigration matters. *See* ***id.*** at 3, 7. In ***Gutierrez***, the only violation alleged in the motion to revoke was the provision that the court held to be invalid related to the defendant's immigration status. Here, however, there are other alleged violations of Appellant's community supervision, to which he pleaded "true," that are unrelated to Appellant's deportation and the condition that he not reenter the country illegally. Therefore, ***Gutierrez*** is distinguishable from the case at hand.

Moreover, we need not address whether ***Gutierrez*** is correct under the facts presented here, because the merits of this case can be resolved on nonconstitutional grounds. *See* TEX. R. APP. P. 47.1; ***In re B.L.D.***, 113 S.W.3d 340, 349 (Tex. 2003) ("As a rule, we only decide constitutional questions when we cannot resolve issues on nonconstitutional grounds."); ***Bradley v. State ex rel. White***, 990 S.W.2d 245, 247 (Tex. 1999) (same); ***Pack v. Fort Worth***, 557 S.W.2d 771, 772 (Tex.

1977) (per curiam) (determining that constitutionality under Texas Constitution of city ordinance was unnecessary to resolve the case); *see also* ***Pena v. State***, 191 S.W.3d 133, 136-38 (Tex. Crim. App. 2006). Therefore, Appellant's federal and state constitutional issues are not necessary to the resolution of this appeal. *See* TEX. R. APP. P. 47.1.

Specifically, Appellant pleaded "true" to his failure to pay court costs in both cases, his failure to pay for the SAQ in both cases, and his failure to pay the supervision fee in the controlled substance case. Appellant's plea of "true" to these violations is sufficient to support the trial court's judgment, irrespective of the alleged unconstitutional conditions of his community supervision. *See* ***Moses***, 590 S.W.2d at 470; ***Cole***, 578 S.W.2d at 128. We note that "[c]ourts may revoke community supervision for a violation of any condition, including violations of any single 'technical' condition." ***Nurridin v. State***, 154 S.W.3d 920, 924 (Tex. App.—Dallas 2005, no pet.). Further, "[e]very condition of probation is important, and if not complied with, subjects the defendant to potential revocation." ***Nicholas v. State***, No. 12–01–00102–CR, 2002 WL 253837, at *2 (Tex. App.—Tyler Feb. 20, 2002, no pet.) (mem. op., not designated for publication).

Appellant's first and second issues are overruled.

JUDGMENT

In his third issue, Appellant asks that we modify and reform the trial court's written judgment to correct a clerical error. The State has joined Appellant in this request.

As a general rule, when an oral pronouncement of sentence and a written judgment differ, the oral pronouncement controls. ***Ex parte Madding***, 70 S.W.3d 131, 135 (Tex. Crim. App. 2002). Further, when it has the necessary information before it, an appellate court may correct a trial court's written judgment to reflect its oral pronouncement. ***Thompson v. State***, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003); ***Ingram v. State***, 261 S.W.3d 749, 754 (Tex. App.—Tyler 2008, no pet.). The Texas Rules of Appellate Procedure expressly authorize us to modify the judgment of the trial court. TEX. R. APP. P. 43.2.

During the sentencing hearing, the trial court did not orally order that restitution be paid. In fact, the trial court stated that it would not order restitution. The written judgments in both cases reflect that $0.00 was required to be repaid by Appellant as restitution. Yet, both of the written judgments also reflect that restitution is to be paid to the "Smith County Collections

Department." In addition, the order revoking Appellant's community supervision in the controlled substance case states that Appellant owes restitution in the amount of $140.00, payable to "Texas Department of Public Safety, Restitution Accounting." It is clear that these were clerical errors. Therefore, we conclude that we have the necessary information to correct the error in the trial court's judgments and can modify the judgments so that they speak the truth. *See* ***id.***

Appellant's third issue is sustained.

DISPOSITION

We have overruled Appellant's first and second issues, and sustained Appellant's third issue. Having sustained Appellant's third issue, we ***modify*** the trial court's judgments to delete the designation of the "Smith County Collections Department" as the recipient of restitution. We also ***modify*** the trial court's order revoking Appellant's community supervision in the controlled substance case to delete the restitution order that $140.00 be paid to "Texas Department of Public Safety, Restitution Accounting." As ***modified***, we ***affirm*** the judgment of the trial court.

BRIAN HOYLE
Justice

Opinion delivered May 23, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)