NO. 12-11-00309-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

PHILL DON JONES, APPELLANT	***§***	***APPEAL FROM THE 114TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITHCOUNTY, TEXAS***

MEMORANDUM OPINION

Phill Don Jones appeals his conviction for aggravated robbery. In one issue, Appellant argues that the evidence is insufficient to show that he violated one of the terms of his community supervision agreement. We affirm.

BACKGROUND

In December 2009, Appellant pleaded guilty to the felony offense of aggravated robbery. Pursuant to a plea agreement, the trial court accepted his plea of guilty but deferred a finding of guilt and placed him on deferred adjudication community supervision for a period of ten years. In August 2011, the State filed an application to proceed to final adjudication of Appellant's guilt. In the application, the State alleged that Appellant violated the terms of his community supervision by committing the offenses of evading arrest or detention and failure to identify, failing to report as required, consuming an alcoholic beverage, using or consuming marihuana, and failing to pay court costs and other fees. A hearing was held on the State's application, and Appellant pleaded true to all of the allegations[1] except that he had committed the offense of evading arrest or

[1] The trial court asked Appellant to plead true or not true to nine allegations. The first allegation was that he was the person placed on community supervision and that certain terms of community supervision had been ordered. Appellant pleaded true to that allegation and to six paragraphs alleging that he violated the terms of his community supervision. He pleaded not true to two paragraphs.

detention and the allegation that he had consumed an alcoholic beverage.

The State presented evidence in support of its application, and the trial court found all of the allegations to be true except for the allegation that Appellant had consumed an alcoholic beverage. The trial court found Appellant guilty, and assessed a sentence of imprisonment for forty years. This appeal followed.

REVOCATION OF COMMUNITY SUPERVISION

In his sole issue, Appellant argues that the evidence is insufficient to support revocation of his community supervision.

Standard of Review

Generally, we review a trial court's decision to revoke community supervision for an abuse of discretion. *See* ***Rickels v. State***, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006) (quoting ***Cardona v. State***, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984)). In a community supervision revocation proceeding, the state has the burden of proving a violation of the terms of community supervision by a preponderance of the evidence. *See* ***Rickels***, 202 S.W.3d at 763-64; ***Cobb v. State***, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The state satisfies this standard when the greater weight of the credible evidence before the court, viewed in a light most favorable to the ruling, creates a reasonable belief that a condition of community supervision has been violated as alleged. *See* ***Rickels***, 202 S.W.3d at 764.

In cases where the trial court revokes a defendant's community supervision based upon findings that the defendant violated more than one condition of community supervision, such a revocation does not constitute an abuse of discretion where any single finding of a violation is held to be valid. *See* ***Smith v. State***, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009) ("We have long held that 'one sufficient ground for revocation would support the trial court's order revoking' community supervision.") (quoting ***Jones v. State***, 571 S.W.2d 191, 193-94 (Tex. Crim. App. 1978)); ***Moore v. State***, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980) ("We need not address appellant's other contentions since one sufficient ground for revocation will support the court's order to revoke probation."); ***Cochran v. State***, 78 S.W.3d 20, 28 (Tex. App.–Tyler 2002, no pet.).

Analysis

Appellant does not argue that he did not violate any of the terms of his community supervision. Instead, he argues that there is insufficient evidence that he committed the offense of

evading arrest or detention and that the trial court's erroneous finding on that issue allowed the State to seek a longer sentence because it could argue that he had committed "new offenses."[2] We disagree.

The State could seek a sentence of between five and ninety-nine years or life imprisonment because the trial court found Appellant guilty of the charged offense of aggravated robbery following a hearing to determine if he violated the terms of his community supervision agreement. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b) (West 2011) ("After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant's appeal continue as if the adjudication of guilt had not been deferred."); TEX. PENAL CODE ANN. §§ 12.32, 29.03(b) (West 2011) (aggravated robbery offense and punishment range). The length of the available sentence did not depend on a specific finding on the allegation that Appellant committed the offense of evading arrest or detention. And the trial court sentenced Appellant for the commission of the original charged offense, not for the violations of his community supervision agreement. *See, e.g.*, ***Atchison v. State***, 124 S.W.3d 755, 760 (Tex. App.–Austin 2003, pet. ref'd) (sentence upon revocation is for charged offense, not for violations of community supervision); ***Sullivan v. State***, 975 S.W.2d 755, 756 (Tex. App.–Corpus Christi 1998, no pet.) (same).

The finding that Appellant violated the terms of his community supervision agreement is supported by the six violations of the community supervision agreement to which Appellant pleaded true. *See, e.g.*, ***Smith***, 286 S.W.3d at 342; ***Watts v. State***, 645 S.W.2d 461, 463 (Tex. Crim. App. 1983) (plea of true to one allegation is sufficient to support revocation of community supervision).

The trial court's ruling that Appellant committed the offense of evading arrest or detention in a vehicle is also supported by the record. We have reviewed the video of the night Appellant was arrested for evading arrest or detention and the testimony of the officer. The video shows the police vehicle arriving on what was described as the scene of an altercation or a disturbance. The officer shines his white spotlight on Appellant's vehicle as Appellant leaves the scene of the disturbance. The police officer then turns his vehicle to follow Appellant. The officer follows Appellant for a short distance before turning on his overhead red and blue lights. After the lights

[2] We note that Appellant pleaded true to the allegation that he committed the offense of failure to identify and that he admitted consuming or using marihuana, which is also an offense.

are turned on, Appellant turns right, a turn he had signaled before the red and blue lights were activated, and then makes an immediate right turn into a CVS parking lot. He drives to the back of the parking lot and hurriedly exits the vehicle and runs away from the officers, leaving his driver's side door open.

Appellant argues that there is no evidence that he committed the offense of evading arrest or detention. Citing ***Brooks v. State***, 76 S.W.3d 426, 434 (Tex. App.–Houston [14th Dist.] 2002, no pet.), he asserts that a person commits the crime of evading arrest or detention only if he knows the person attempting to stop him is a police officer and he refuses to yield to a "police show of authority." Implicit in this argument is an assertion that Appellant did not know that the officer was trying to stop him when the officer activated the red and blue lights or that Appellant did not see the lights.

A person commits the offense of evading arrest or detention if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him. *See* TEX. PENAL CODE ANN. § 38.04(a) (West Supp. 2012). Based on the physical location of Appellant's vehicle when the lights were activated, it is possible that he did not immediately see the lights. He was in the midst of a turn when the lights were activated and his rearward lookout may not have been his primary concern. However, the subsequent immediate turn and abandoning of his vehicle support the trial court's conclusion that Appellant did in fact see the lights and understand the officer was attempting to detain him.

The trial court's ruling can be sustained on the basis of the admitted violations of the terms of Appellant's community supervision. *See* ***Moore***, 605 S.W.2d at 926; ***Hart v. State***, 264 S.W.3d 364, 367 (Tex. App.–Eastland 2008, pet. ref'd). In addition, the trial court's finding that Appellant committed the offense of evading arrest or detention is sufficient to support the revocation of Appellant's community supervision. Accordingly, we hold that the trial court did not abuse its discretion in revoking Appellant's community supervision, and we overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the judgment of the trial court.

JAMES T. WORTHEN
Chief Justice

Opinion delivered September 28, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

SEPTEMBER 28, 2012

NO. 12-11-00309-CR

PHILL DON JONES,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 114th Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 114-1689-09)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.