

NO. 12-14-00027-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***WILLIAM GRANT DORSETT,
APPELLANT***

§ *APPEAL FROM THE 173RD*

V.

§ *JUDICIAL DISTRICT COURT*

***THE STATE OF TEXAS,
APPELLEE***

§ *HENDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

William Grant Dorsett appeals his conviction for theft following the trial court's revocation of his deferred adjudication community supervision. The trial court sentenced Appellant to three years of imprisonment. In his sole issue, Appellant asserts the trial court abused its discretion by revoking his community supervision. We affirm.

BACKGROUND

On October 9, 2012, Appellant pleaded guilty to the offense of theft by deception. The trial court accepted the plea, deferred adjudication, and placed Appellant on community supervision for six years. Among the terms of the community supervision are the requirements to pay restitution in the amount of \$33,290.00, court costs, attorney's fees, supervision fees, a charge for a substance abuse evaluation, and a fee to the county Crime Stoppers program. The court also ordered Appellant to complete 360 hours of community service work but later waived this requirement due to Appellant's medical condition. In December 2012, the State moved to proceed to adjudication of guilt, naming in seven counts the conditions of community supervision that Appellant allegedly violated. In May 2013, the trial court entered an order amending the terms of Appellant's community supervision. He still was required to pay the

above named fees, although they were somewhat modified. However, the court allowed Appellant to travel out of state for work purposes.

On September 10, 2013, after an evidentiary hearing, the trial court found that Appellant had violated several conditions of his community supervision and adjudicated him guilty of theft by deception. The court found it true that Appellant failed to pay restitution but “excused” Appellant from having to fulfill that condition due to inability to pay. The court further found Appellant has the capability to work and pay the expenses in counts one through five and that Appellant had willfully not paid those expenses. After a sentencing hearing, the trial court sentenced Appellant to three years of imprisonment.

ABILITY TO PAY

In his sole issue, Appellant contends that the trial court abused its discretion by revoking his community supervision. He argues that the evidence does not show he had the ability to pay the remedial financial obligations that he was required to pay as a condition of his community supervision. Therefore, his argument continues, the State did not prove that his failure to pay was willful.

Applicable Law

We review a trial court’s decision to revoke community supervision for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). Abuse of discretion occurs only when the trial court’s decision was so clearly wrong as to lie outside the zone within which reasonable persons might disagree. *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992). The trial court is the sole trier of the facts, the credibility of the witnesses, and the weight to be given to the evidence presented. *Naquin v. State*, 607 S.W.2d 583, 586 (Tex. Crim. App. [Panel Op.] 1980).

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. *Rickels*, 202 S.W.3d at 763-64. 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. *Rickels*, 202 S.W.3d at 764; *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). When the only violation of community supervision is the defendant’s failure to pay compensation to appointed

counsel, community supervision fees, or court costs, the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge. TEX. CODE CRIM. PROC. ANN. art. 42.12, § 21(c) (West Supp. 2014).

Analysis

Kristin Bidy, Appellant's community supervision officer, testified that Appellant was delinquent in the amounts of \$15.00 for a substance abuse evaluation, \$200.00 for community supervision fees, \$6.00 in court costs, \$19.00 in attorney's fees, \$50.00 for Crime Stoppers, and \$565.00 in restitution. She stated that, before court that day, Appellant told her he had \$40.00 with him but would not pay unless instructed by the judge or his attorney. She testified that Appellant has not made a bona fide effort to pay, explaining that he has not found work, but seems able to work.

On cross examination, Bidy testified that Appellant's previous attorney told him not to pay. She explained that Appellant receives a monthly Social Security check in the amount of \$1,543.46. Payments for two loans totaling \$1,462.59 are drafted from his bank account each month.

Steve Jeffus, Director of Henderson County Community Supervision and Corrections Department, testified that Appellant said he would pay restitution in full but only if he was placed on community supervision for a one year term. According to Jeffus, Appellant was told that he has a year to a year and a half to live, so Appellant was not concerned about paying restitution. On cross examination, Jeffus clarified that Appellant's sister-in-law agreed to pay the restitution upfront if the State dismissed the case or gave Appellant a year of community supervision and then dismissed the case. When Appellant was given six years of community supervision, the sister-in-law refused to pay. On redirect, he testified that he told Appellant he could possibly get an early discharge if he paid in full upfront. Jeffus explained that Appellant responded that he was not going to ask for that money because of his health issue.

Appellant testified in his own behalf, explaining that he has a GED and has looked for work, although he never filled out an application for employment. He has frequent doctor's appointments due to vision problems and leukemia. He also has diabetes and neuropathy. He explained that he disputed the amount of restitution he should have to pay and they never reached an agreement on an amount to pay upfront in order to dismiss the case. He said he has never been able to pay the restitution. He said he owes about \$450,000.00 in debt and his only

income is the Social Security check of about \$1,500.00 a month. He has about \$60.00 to \$70.00 left each month after the bank assesses fees and debits his account for the payments he owes. He explained that, at the time he was placed on community supervision he was “living off investments.” He claimed to have had “about a million four in stocks” until the stock market “went down.” The Internal Revenue Service claims he owes it \$880,000.00. He testified that all of his assets are now gone. His wife brings home about \$2,400.00 per month, and they live off that money. However, each month they have a \$250.00 to \$300.00 deficit. They rent a house from their daughter. The rent is \$850.00, but if they don’t have enough money for the month, they pay her \$600.00 or \$650.00. His daughter pays his cell phone bill. He pays \$250.00 or \$280.00 per month for medication. The Veteran’s Administration provides some medication at no charge to him.

On cross examination, Appellant said he had between \$40.00 and \$50.00 on him. He admitted that he and his wife pay for cable television. He has paid \$240.00 toward restitution and costs since July 8, 2013. He explained that he was going to pay the restitution if he could get it. His attorney told him that his community supervision could not be revoked if he did not pay it. He told Bidy that he did not have to pay because he could not be revoked if he did not pay. He offered to pay with his Social Security check once the “note comes off of the First State Bank,” which will be in January or February. He did not have the money at the time he signed the plea papers and did not know where it was going to come from. The terms of the community supervision were modified to allow him to travel for work and he intended to get a job hauling silage and hay to Kansas. Due to his medical issues, he was unable to work. He testified that he never intended to say he would not pay the restitution. He reports to his community supervision officer and comes to court as required.

Pursuant to the original order placing Appellant on community supervision, Appellant was to pay a one-time fee of \$50.00, a one-time fee of \$15.00, and monthly fees totaling \$57.00. These fees are in addition to the required restitution payment. Appellant testified that, at the time he was placed on community supervision, he was living off investments, yet two months later could not pay the required fees from those funds. After loan payments he was committed to paying, he had \$80.87 remaining from his Social Security check each month, minus bank fees. He testified that, when necessary, he could pay up to \$250.00 less for rent in any given month. He also indicated that he chose to dedicate money to pay for cable television instead of using that

money to pay fees required as terms of his community supervision. In spite of an existing order to pay, Appellant refused to make a payment on the day of the hearing on the State's motion to proceed to adjudication. Appellant was able to drive from his home in Greenville to see his community supervision officer and go to court in Henderson County, and see doctors in Dallas. Bidy testified that he seems able to work, while Appellant testified, without elaboration, that he could not work due to his medical issues. The trial court, who was entitled to accept or reject any or all of Appellant's testimony, could have determined that Appellant could have held a job. See *Naquin*, 607 S.W.2d at 586. Further, the trial court could have determined that Appellant had the ability to pay in light of the fact that his wife's salary paid their living expenses and he had some choice in how to allocate the admittedly small remainder of the money from his Social Security check.

Reviewing the record as a whole, we conclude the greater weight of credible evidence created a reasonable belief that Appellant was able to pay and did not pay the court ordered costs and fees. Therefore, the trial court did not abuse its discretion in revoking Appellant's community supervision. See *Rickels*, 202 S.W.3d at 763-64. We overrule Appellant's sole issue.

DISPOSITION

Because the trial court did not abuse its discretion in revoking Appellant's community supervision, we *affirm* the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered March 31, 2015.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MARCH 31, 2015

NO. 12-14-00027-CR

WILLIAM GRANT DORSETT,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 173rd District Court
of Henderson County, Texas (Tr.Ct.No. B-19,825)

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 the decision be certified to the court below for observance.

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