

Affirmed and Opinion filed April 26, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00409-CR

JARRON DWAYNE TURNER, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 734616**

OPINION

Jarron Dwayne Turner appeals a revocation of probation for aggravated robbery on the grounds that: (1) the evidence is insufficient to support the trial court's finding of true to the allegations in the motion to revoke probation; (2) the hearing was not held by a neutral and detached hearing body; and (3) he received ineffective assistance of counsel when his trial counsel failed to object to the trial court's adversarial and prejudicial questioning of appellant's witnesses. We affirm.

Background

Appellant was convicted of aggravated robbery, sentenced to ten years confinement, and placed on ten years probation.¹ The State thereafter filed a motion to revoke probation, and, after conducting a hearing, the trial court revoked the probation and sentenced appellant to ten years confinement.

Sufficiency of the Evidence

Appellant's first point of error contends that the evidence was insufficient to prove that he: (1) committed a new law offense; (2) was not employed; or (3) failed to perform community service as ordered.

To sustain a motion to revoke probation, the State must prove by a preponderance of the evidence that the defendant violated the terms of his probation. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). When multiple grounds for revocation are alleged, proof of any one of the alleged violations is sufficient to support an order revoking probation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980). An order revoking probation is reviewed for abuse of discretion. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984).

In this case, the order revoking community supervision states that appellant had violated the terms of his probation by failing to: (1) not commit an offense against the laws of this or any other state; (2) avoid injurious or vicious habits; (3) work faithfully at suitable employment; (4) participate in a community service program; (5) pay supervision fees; (6) submit to an alcohol/drug evaluation by November 14, 1997; and (7) observe a curfew from 6:00 p.m. until 6:00 a.m. Of these, appellant has not challenged the findings that he used a controlled substance, failed to pay supervision fees, failed to attend an

¹ For purposes of this opinion, the term "probation" will be used synonymously with "community supervision."

approved treatment program, or failed to observe his curfew.² Because the unchallenged findings are sufficient to sustain the revocation of appellant's probation, we need not address his contentions regarding the challenged findings. *Moore*, 605 S.W.2d at 926. Accordingly, appellant's first point of error is overruled.

Due Process

Appellant's second point of error claims that the hearing was not heard by a neutral and detached hearing body because the trial court took on the role of a prosecutor by engaging in a full cross-examination of each of appellant's witnesses. However, because appellant failed to raise any objection to this conduct in the trial court, he has not preserved this complaint for our review. *Brewer v. State*, 572 S.W.2d 719, 721 (Tex. Crim. App. 1978); *Voelkel v. State*, 629 S.W.2d 243, 246 (Tex. App.—Fort Worth 1982), *aff'd*, 717 S.W.2d 314 (Tex. Crim. App. 1986). Accordingly, appellant's second point of error is overruled.

Ineffective Assistance

Appellant's third point of error contends that he received ineffective assistance of counsel because his trial counsel failed to object to the trial court's adversarial and prejudicial questioning of appellant's witnesses, which caused appellant to waive error as to the trial court's lack of neutrality.

To establish ineffective assistance of counsel, a defendant must show that (1) his counsel's performance fell below an objective standard of reasonableness, and (2) the defendant suffered harm as a result of his counsel's inadequate performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999). To demonstrate harm, the appellant must show a reasonable probability

² Further, appellant does not challenge the disparity between: (a) the judge's oral pronouncement in open-court that the new law offense, failure to be employed, and failure to do community service were true, and (b) the written order revoking community supervision, which lists four additional probation violations.

that, but for counsel's unprofessional errors, the outcome of the trial would have been different. *Thompson*, 9 S.W.3d at 812.

In this case, the evidence established that appellant had violated the terms of his probation prior to the trial judge asking any questions. Therefore, the record does not reflect that his trial counsel's failure to object to the questioning by the trial court made the revocation of his probation any more likely to have occurred. *See Bennett v. State*, 705 S.W.2d 806, 807 (Tex. App.—San Antonio, no writ). Because appellant's third point of error thus fails to establish ineffective assistance of counsel, it is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed April 26, 2001.

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.³

Do not publish — TEX. R. APP. P. 47.3(b).

³ Senior Chief Justice Paul C. Murphy sitting by assignment.