Affirmed and Opinion filed September 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01115-CR
NO. 14-97-01118-CR

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GEOFFORY CLINTON MONSE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause Nos. 28,883 & 31,987

O P I N I O N

In a consolidated appeal, appellant, Geoffory Clinton Monse, appeals his conviction in trial court cause number 28,883 for three counts of credit card abuse. Appellant also appeals his conviction in trial court cause number 31,987 of robbery. We affirm the trial court judgment.

BACKGROUND FACTS

In trial court cause number 28,883, appellant was charged with three counts of credit card abuse. On June 9, 1995, appellant pled guilty and was sentenced to deferred adjudication probation for five years. The court modified the terms and conditions of appellant's deferred adjudication probation on May 20, 1996. Appellant's deferred adjudication probation was modified a second time on September 6, 1996. A third modification of appellant's deferred adjudication probation occurred on October 16, 1996. The modifications ordered appellant to submit to a period of detention in the Brazoria County jail for forty-two days or until a bed became available at Brazos Place and to participate in a community based program, a thirty day inpatient program at Brazos Place. On October 17, 1996, appellant filed a motion for consideration to serve an alternative probationary sentence in the Jefferson County Boot Camp. The trial court signed the motion and ordered appellant to complete the Jefferson County Boot Camp. On June 13, 1997, the trial court heard argument on the State's motion to revoke appellant's probation because appellant violated the terms and conditions of that probation. The trial court found that appellant had violated seventeen paragraphs of the conditions of his probation. Thus, the trial court adjudicated appellant's guilt as it concerned the offense of credit card abuse. The trial court found appellant guilty. After hearing evidence as to punishment, the trial court assessed punishment at five years imprisonment in the Texas Department of Criminal Justice, Institutional Division. However, the court then ordered this sentence probated for a period of ten years. Appellant appeals on two points of error in this cause number.

In trial court cause number 31, 987, appellant pled guilty to a charge of robbery on June 13, 1997. The trial court sentenced appellant to ten years imprisonment in the Texas Department of Criminal Justice, Institutional Division. The trial court also probated this sentence for ten years. As a condition of probation, the trial court ordered appellant to participate in a substance abuse felony program. Appellant appeals this cause number on one point of error.

DISCUSSION AND HOLDINGS

As to the appeal in the credit card abuse case, appellant appeals on two points of error. In his first point of error, appellant contends the trial court erred by assessing more than 180 days in jail in violation article 42.12 of the Texas Code of Criminal Procedure. Appellant argues that because the trial court sentenced him to forty-two days detention in the county jail as a modified condition of probation on October 15, 1996, the trial court cannot order him on September 8, 1997, to remain in custody until a bed is available at a substance abuse treatment facility not to exceed 180 days. Appellant argues that because 180 days is the maximum amount of time in jail he can serve as a condition of probation, the judgment of the court should be reformed to reflect a period of time which includes his forty-two days he has served as a modified condition of his probation. However, we are reluctant to reform the judgment because we find appellant's argument erroneous.

Appellant's argument ignores the event which occurred between October 15, 1996 and September 8, 1997—namely that his deferred adjudication probation was revoked and appellant was adjudicated guilty of three counts of credit card abuse. "What this means is that once a defendant is adjudicated guilty, the community supervision ordered as part of the deferred adjudication, has no effect upon any subsequent punishment the court may order." *Keeling v. State*, 929 S.W.2d 144, 145 (Tex. App.—Amarillo 1996, no pet.) (citing *McNew v. State*, 608 S.W.2d 166 (Tex. Crim. App. 1978)). Thus, the forty-two days, which were a condition of appellant's deferred adjudication, pertain to a separate matter and are not counted against the maximum 180 days appellant may serve as a condition of community supervision. Thus, the trial court did not assess more than 180 days in jail in violation of article 42.12, and we overrule appellant's first point of error.

In his second point of error, appellant contends the doctrine of collateral estoppel bars the State from pursuing an alleged probation violation occurring prior to the signing of the order for boot camp. Appellant argues that once the trial court signed his motion for consideration to serve an alternate probationary sentence in the Jefferson County boot camp

on October 17, 1996, it could no longer adjudicate his guilt by using violations of his probationary conditions which occurred before October 17, 1996. Appellant asks that we reverse the trial court's adjudication of guilt. We cannot consider appellant's request because we have no jurisdiction to hear an appeal from an adjudication of guilt. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 1999) (stating that no appeal may be taken from a determination to adjudicate guilt). Since we have no jurisdiction to hear this point of error, we overrule appellant's second point of error.

As to his conviction for robbery, appellant appeals on one point of error. He contends the trial court erred in ordering him to participate in a substance abuse felony program without evidence to support the affirmative findings required by the Texas Code of Criminal Procedure. According to the code, a trial court may impose the condition of community supervision in a substance abuse felony program if it makes an affirmative finding of the following:

> (A) drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and
>
> (B) the defendant is a suitable candidate for treatment as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

TEX. CODE CRIM. PROC. ANN. art. 42.12 § 14(b)(3) (Vernon Supp. 1999). There are no express findings of these two facts in this case. However, the well established rule is that when a trial judge fails to make specific findings of fact and conclusions of law, it is presumed that the court made the necessary findings to support the decision of the court. *See Ice v. State*, 914 S.W.2d 694, 695 (Tex. App.—Fort Worth 1996, no pet.); *Vela v. State*, 871 S.W.2d 815, 816-17 (Tex. App.—Houston [14th Dist.] 1994, no pet.).

> [W]e must determine whether the trial court's finding, in this case the granting of community supervision in the SAFP, is supported by the record. If findings of fact are not filed, we presume that the trial court made the findings necessary to support its ruling, so long as those implied findings are supported by the record.
>
> The reviewing court must review the entire record to determine whether there are *any* facts that lend support for any theory upon which the trial court's

> decision can be sustained. If the implied or actual finding is supported by the record, it must be sustained.

Ice, 914 S.W.2d at 695-96 (footnotes omitted).

After reviewing the record, we determine there are enough facts in the record to support the trial court's decision. The record reflects that appellant was arrested on numerous occasions for public intoxication, with one arrest occurring one month before the sentencing hearing. In his psychological evaluation, appellant admits to a long history of alcohol and drug abuse, which started at age seventeen. Appellant stated that he had tried every drug with the exception of intravenous drugs. The psychologist concluded that appellant exhibited alcohol and substance abuse and needed counseling. The record also shows that appellant failed three random urinalysis tests. The pre-sentence investigation report, which was before the judge at sentencing, also reflected a history of extensive drug use. Also, the trial court knew that the robbery offense to which appellant pleaded guilty was for stealing eighteen cans of beer from a convenience store. And finally, appellant's own trial counsel argued that a SAFP program would be appropriate for his client. We believe the evidence supports the trial court's decision to place appellant in a substance abuse felony program because drugs or alcohol abuse significantly contributed to the commission of this offense.

In addition, the record also supports a finding that appellant would be a good candidate for the program.

> Given the circumstances of the offense and relying on the entire record, placing the defendant on community supervision creates the inference that the trial judge has found that community supervision is in the best interest of society and the defendant. Similarly, by ordering the defendant to SAFP, the trial judge implicitly found that the defendant was a suitable candidate for treatment in SAFP.

Id. at 696.

We overrule appellant's point of error and affirm both the judgments of the trial court.

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Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed September 16, 1999.

Panel consists of Justices Yates, Fowler, and Lee.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justice Norman Lee sitting by assignment.