



NUMBER 13-19-00165-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ARTHUR A. DUMAS,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 187th District Court
of Bexar County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Benavides**

By one issue, appellant Arthur Dumas appeals the trial court's revocation of his community supervision arguing the evidence was insufficient to justify revocation. We affirm.

I. BACKGROUND¹

On October 11, 2017, Dumas pleaded guilty to one count of assault family violence, a second offense, which is a third-degree felony. See TEX. PENAL CODE ANN. § 22.01(B). Dumas was sentenced to five years' imprisonment, probated for five years and a \$1,500 fine.

In January 2018, the State filed its first motion to revoke community supervision. The State alleged that Dumas: (1) failed to report to the probation office for three months in 2017; and (2) failed to complete the Batterers Intervention and Prevention Program (BIP). After Dumas entered a plea of true, the trial court found the allegations true, continued Dumas on probation and ordered the following sanctions: (1) 79 days' confinement in the Bexar County Jail, and (2) requested Dumas to provide proof of residency and employment within thirty days.

In May 2018, the State filed its second motion to revoke community supervision. In the second motion, the State alleged that Dumas: (1) failed to pay court costs, the fine, a urinalysis fee, and monthly supervision fee; (2) committed a new assault offense; (3) failed to complete the BIP program; (4) contacted the complaining witness in the underlying assault case in violation of his probation terms; and (5) failed to provide proof of employment and residency. In June 2018, the State withdrew the second motion to revoke.

¹ This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001.

In January 2019, the State filed its third motion to revoke community supervision alleging that Dumas: (1) committed a new offense of assault;² (2) failed to report to the probation department for two months in 2018; (3) failed to pay court costs, the fine, a urinalysis fee, and monthly supervision fee; and (4) failed to complete the BIP program.

At the revocation hearing in February 2019, the State abandoned the allegation related to a new offense and Dumas entered a plea of true to the allegation regarding his failure to report to the probation department and not true to the other allegations. The witnesses who testified were Janie Zamora, Dumas's current probation officer; Kevin Hernandez, the trial court liaison officer for the 187th District Court; and Dumas.

Zamora testified that she was Dumas's current probation officer but met with him for the first time in November 2018, when she took his case over from another probation officer. She explained that he had failed to report for September and October 2018 and was informed of the conditions for the BIP. Based on the probation department records, Zamora stated that when Dumas missed his appointment in September, his former probation officer rescheduled the appointment with Dumas, but Dumas did not show for the rescheduled appointment. She stated she took over Dumas's case in October 2018 and called him but could not leave a voicemail on his cell phone. Zamora also agreed that she did not send a letter to Dumas regarding the missed appointment. Zamora told the trial court that she was concerned that Dumas had not attended the because he had committed a new assault with the same complaining witness. Zamora testified that she

² This is the same offense the State alleged in its second motion to revoke community supervision. It just alleged the offense again in the third motion to revoke community supervision after dismissing the previous motion.

believed Dumas was working when she first met with him but recalled that Dumas had been documented as being homeless at some point in her records. She explained that Dumas was given a referral sheet to the BIP program, and even though he had taken other domestic violence classes in jail, that those classes were not allowed as an alternative to BIP.

Hernandez testified that he was familiar with Dumas and had explained the BIP requirement to Dumas in the past. He testified that although there was a fee associated with BIP, Dumas could have attempted to qualify for an indigency program to help him with his payments. However, he agreed that Dumas was not informed about the indigency program. Hernandez also stated that Dumas never claimed that his homelessness or unemployment was the reason he could not make the payments that were required of his probation.

Dumas testified regarding the missed probation appointments. He explained that in September 2018, he contacted his former probation officer to reschedule the appointment due to a lack of transportation, but the officer had to later reschedule the appointment. Dumas stated he was unaware his probation case had been transferred to Zamora in October 2018. He said his cell phone had been disconnected for a time, he was homeless at that time and unemployed, and he was unable to make payments towards his required fees. Dumas explained that his listed residence was his cousin's business and if any mail had been received, his cousin would have notified him. Dumas testified that he had been "confused" about the BIP program requirement because he had already graduated from another family violence class; however, he was unable to provide

the proof of class completion because he had been arrested.

The trial court found all of the remaining allegations against Dumas true, revoked his community supervision, and sentenced him to four years' imprisonment in the Texas Department of Criminal Justice—Institutional Division. This appeal followed.

II. EVIDENCE WAS SUFFICIENT

By his sole issue, Dumas alleges the evidence was insufficient to justify the revocation.

A. Standard of Review

An appellate court reviews a trial court's decision to revoke community supervision for an abuse of discretion. *See Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013); *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The State bears the burden to prove the defendant violated a term of his community supervision by a preponderance of the evidence. *Hacker*, 389 S.W.3d at 864–65. A preponderance of the evidence is met “when the greater weight of the credible evidence . . . create[s] a reasonable belief that the defendant has violated a condition of his probation.” *Hacker*, 389 S.W.3d at 865 (quoting *Rickels*, 202 S.W.3d at 764); *see also York v. State*, 342 S.W.3d 528, 543 n.86 (Tex. Crim. App. 2011) (reiterating preponderance of the evidence is much lower standard than beyond a reasonable doubt, but much higher than probable cause).

If the trial court finds the State's allegations true, the trial court “has wide discretion to modify, revoke, or continue the [community supervision].” *Smith v. State*, 587 S.W.3d 413, 419 (Tex. App.—San Antonio 2019, no pet.) (quoting *Ex parte Tarver*, 725 S.W.2d

195, 200 (Tex. Crim. App. 1986)); *see also Dansby v. State*, 468 S.W.3d 225, 231 (Tex. App.—Dallas 2015, no pet.). “If the State fails to meet its burden of proof, the trial court abuses its discretion by revoking the community supervision.” *Brown v. State*, 354 S.W.3d 518, 519 (Tex. App.—Fort Worth 2011, pet. ref’d) (mem. op.).

“The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial [court’s] ruling.” *Id.* We remain mindful that proof of a violation of one condition of community supervision is sufficient to support the trial court’s decision to revoke. *Garcia v. State*, 387 S.W.3d 20, 26 (Tex. Crim. App. 2012).

B. Applicable Law and Discussion

Although the State alleged three violations of his probation, Dumas pleaded true to one, and the trial court found the two additional violations to be true. A violation of one condition of probation is sufficient to revoke. *Garcia*, 387 S.W.3d at 26.

The State elicited testimony of Dumas’s failure to report, as well as his failure to complete the BIP program as required. Although Dumas testified to his confusion regarding both his reporting and the BIP program, the trial court is the sole judge of the credibility of the witnesses and found the State had provided sufficient evidence to meet the preponderance of evidence standard. *See Brown*, 354 S.W.3d at 519; *Hacker*, 389 S.W.3d at 864–65.

The trial court did not abuse its discretion in finding the allegations in the motion to revoke true and sentencing Dumas to a term of imprisonment. *See Hacker*, 389 S.W.3d at 864–65. We overrule Dumas’s sole issue.

III. CONCLUSION

We affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
21st day of May, 2020.