



NUMBER 13-18-00673-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

DAVID LEE RAMIREZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 94th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides**

By a single issue, appellant David Lee Ramirez appeals from the trial court's adjudication of his guilt and his sentence of three years' imprisonment in the Texas Department of Criminal Justice—Institutional Division. Ramirez pleaded guilty to a single count of possession of more than one gram but less than four grams of a controlled substance (methamphetamine), a third-degree felony. See TEX. HEALTH & SAFETY CODE

ANN. §§ 481.102(6), 481.115. The trial court imposed deferred adjudication community supervision for four years beginning in July 2016. His community supervision was revoked in 2018. We affirm.

I. BACKGROUND

Between 2016 and 2018, the State filed four different motions to modify or to revoke Ramirez's community supervision based upon his alleged violations of law,¹ his alleged failure to abstain from drugs, and other alleged failures to comply with the terms of his supervision. The trial court imposed sanctions three different times ranging from jail time, a batterer's intervention program, and drug treatment.

The State's fourth motion to revoke in April 2018 was based upon Ramirez's failure to comply with the rules of the drug treatment facility he had been ordered to attend after the State's third motion to revoke.² His violations included minor as well as major

¹ The first motion to revoke in August 2017 was based upon Ramirez's possession of drugs and drug paraphernalia in Bee County, as well as his failure to pay supervision fees, his failure to obtain permission to leave Nueces County, his failure to report his arrest to his probation officer within twenty-four hours of his arrest, and operating a motor vehicle without a valid driver's license and without insurance. The State's second motion to revoke in January 2018 was based upon Ramirez's arrest for assault bodily injury of a family member in Live Oak County, failure to obtain permission to leave Nueces County, and failure to pay supervision fees since June 27, 2016. The State's third motion to revoke, filed in April 2018, was based upon Ramirez's positive urinalysis for methamphetamines in April 2018; his move from living in Nueces County to living in Live Oak County without notifying his supervising officer within twenty-four hours as required; and his failure to do intake in the Batterer's Intervention Prevention Program.

² The rule violations alleged were: (1) disrespectful language to another resident on 8/28/2018 by saying, "you're full of shit"; (2) misuse of furniture and facilities—doing chin-ups on a towel bar on 09/11/2018; (3) violating his fraternization contract on 9/11/2018 by stopping in front of a resident, realizing he could not sit near him, and then moving away; (4) violating grooming requirements by failing to shave on 09/14/2018; (5) preparing food outside of scheduled times and outside the dining area—Ramirez prepared soup packets on 9/13/2018 in the dorm bathroom; (6) on 9/14/2018, Ramirez was sleeping during free time which violated curfew; (7) on 8/23/2018 he was late putting his laundry out for pick-up; (8) Ramirez entered resident room 4 which was off-limits to him; (9) Ramirez failed to provide his AA/NA log as required on 7/24/2018; (10) Ramirez was late for kitchen duty on 7/29/2018, 7/31/2018, and 8/22/2018; (11) Ramirez took two breakfast trays in violation of regulations; and (12) on 08/19/2018, Ramirez locked his ID badge inside his locker which was a violation of the requirement that he wear it at all times.

violations according to the program's guidelines. On October 25, 2018, the trial court accepted Ramirez's signed admonishments, written statements, and waiver. Ramirez pleaded "true" to all the allegations. The State announced an agreed recommendation on punishment of three years' imprisonment with Substance Abuse Felony Probation (SAFPF). The trial court imposed a three-year sentence during the hearing and signed the judgment on November 27, 2018. Ramirez filed a timely motion for new trial raising his current complaint and obtained an order setting it for hearing, but Ramirez was transferred before the motion could be heard³ and it was overruled by operation of law. It is from that judgment that Ramirez appeals.

II. REVOCATION

By a single issue, Ramirez argues that the trial court erred by not adjudicating his guilt in open court and allowing him a separate punishment hearing. However, he acknowledges that he did not object to the trial court's failure to adjudicate guilt in open court. The State argues that he did not preserve error. See TEX. R. APP. P. 33.1. Because there is a question regarding whether error was preserved under the circumstances here, we address Ramirez's issue. See *Issa v. State*, 826 S.W.2d 159, 159–60 (Tex. Crim. App. 1992) (per curiam) (holding that timely filed motion for new trial preserved issue for appeal of trial court's refusal to allow evidence for punishment on revocation of deferred adjudication).

³ Ramirez was a necessary witness at the motion for new trial and his transfer prevented his presence. Because the motion was set on the last possible date, there was not time for his transfer back to the trial court.

A. Standard of Review

We review a trial court's decision to revoke deferred adjudication community supervision for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984); *Lawrence v. State*, 420 S.W.3d 329, 331 (Tex. App.—Fort Worth 2014, pet. ref'd). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated at least one of the terms and conditions of community supervision. *Cobb v. State*, 851 S.W.2d 871, 873–74 (Tex. Crim. App. 1993). 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). 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. *Cardona*, 665 S.W.2d at 493. If the State fails to meet its burden of proof, the trial court abuses its discretion in revoking the community supervision. *Cardona*, 665 S.W.2d at 493–94.

B. Discussion

Ramirez was given written notice of the alleged violations of his community supervision, appointed counsel, given notice of the hearing, and appeared in person with counsel at the hearing. He was admonished in writing and was orally admonished that if he pleaded true to a violation, then the trial court would find the violation true because he admitted his violation. Ramirez was asked if he read and signed the written admonishments, if his lawyer had reviewed them with him, and if he understood them. He responded “yes” to each question. Ramirez pleaded true to all the alleged violations. The

trial court then asked for recommendations:

COURT: Okay. So you're recommending revocation?

[State]: Yes, Your Honor, agreed recommendation, revocation and three years TDCJ.

[Defense]: That is our agreed recommendation, Your Honor.

COURT: What's probation's opinion on all this?

Probation: We were recommending SAFPF.

COURT: Okay. All right. Anybody wish to present any evidence?

[Defense]: Not as to the allegations, but as to disposition, I'd like [to] call Mr. Ramirez.

After Ramirez responded to counsel's questions, Ramirez then read a statement in which he alleged that his violations were a result of self-defense to harassment and assault. The State did not cross-examine him. Afterwards, the trial court said, "Okay. You're asking for three years. They want SAFPF?" Defense counsel added, "And we're asking for three years as well." The trial court pronounced sentence: "All right. Three years—look, three years it is." Ramirez's original offense was a third-degree felony with a punishment range of two to ten years. See TEX. PENAL CODE ANN. § 12.34(a). The signed judgment reflected that the trial court adjudicated Ramirez's guilt of the original controlled substance offense. However, it was signed weeks after the revocation hearing.

A defendant is entitled to the opportunity to present evidence on the applicability of a particular sanction or punishment and to offer evidence in support of mitigation or explanation. See *Issa*, 826 S.W.2d at 159–60. The trial court allowed that in the present case. Defense counsel called Ramirez as a witness for punishment purposes and did not seek to call any other witnesses. In *Hardeman v. State*, the court of criminal appeals

emphasized that a defendant must have the opportunity to present evidence during the proceedings. See 1 S.W.3d 689, 691 (Tex. Crim. App. 1999); see also *Camarillo v. State*, No. 13-13-00472-CR, 2014 WL 3928115, at *2 (Tex. App.—Corpus Christi—Edinburg June 12, 2014, pet. ref'd) (mem. op., not designated for publication) (recognizing no “absolute right to a separate punishment hearing” after the adjudication of guilt at a revocation hearing).

In addition, although the adjudication of guilt was not announced on the record, defense counsel and the State made an agreed recommendation to the trial court that included adjudication, a three year sentence of imprisonment in the Texas Department of Criminal Justice—Institutional Division, and a recommendation for felony inpatient drug treatment, SAFPF, such that adjudication was not a surprise. A trial court’s failure to verbalize the adjudication of guilt does not render the judgment void. *Villela v. State*, 564 S.W.2d 750, 751 (Tex. Crim. App. [Panel Op.] 1978). “Beyond the pronouncement of sentence, ‘no further ritual or special incantation from the bench is necessary to accomplish an adjudication of guilt.’” *Jones v. State*, 795 S.W.2d 199, 201 (Tex. Crim. App. 1990).

Finally, the alleged evidence that Ramirez claims he wanted to present had nothing to do with the violations of the treatment center rules and was therefore not relevant. Ramirez was not alleged to be violent, rather he was alleged to have disregarded all kinds of rules of the drug treatment facility: civility, work detail assignments, tardiness, dietary rules, grooming, fraternization, and others. Ramirez was permitted to testify to his belief that the violations alleged resulted from his efforts to defend himself from harassment and

sexual assault despite their lack of relevance to the violations. Further testimony would have been unlikely to have made any difference due to its lack of relevance. See TEX. R. EVID. 402; *Montgomery v. State*, 810 S.W.2d 372, 376 (Tex. Crim. App. 1990) (“[E]vidence merely tending to affect the probability of the truth or falsity of a fact in issue is logically relevant.”).

Accordingly, we overrule Ramirez’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
25th day of June, 2020.