Affirmed and Opinion filed April 13, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00064-CR

PAUL RANDALL SCHIELACK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 752,805

O P I N I O N

Appellant, Paul Randall Schielack, pled guilty to the charge of driving while intoxicated. A sentence of ten years was suspended, and appellant was placed under the terms and conditions of community supervision. The State subsequently filed a motion to revoke alleging that appellant violated a condition of his community supervision by using cocaine. At the hearing, the State introduced a lab report which showed the presence of cocaine metabolites in appellant's urine. The trial court found the allegation to be true and revoked appellant's community supervision.

Appellant brings one point of error. He argues the evidence is insufficient to support the trial court's order because the lab reports supporting the court's decision were improperly admitted under Texas Rule of Evidence 901. Appellant contends that because the reports were not properly admissible, there is insufficient evidence to support the revocation. However, whether the reports were properly admitted is immaterial for the purposes of reviewing the sufficiency of the evidence. When assessing sufficiency of the evidence, we must consider all of the evidence admitted at trial whether it was properly admitted or not. *See Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App.1993).

The State's burden of proof in a revocation proceeding is by a preponderance of the evidence. *See Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App.1993). Where the State has failed to meet its burden of proof, the trial court abuses its discretion in issuing an order to revoke community supervision. *See Cardona v. State*, 665 S.W.2d 492, 493-94 (Tex. Crim. App.1984). We examine that evidence in a light most favorable to the trial court's findings.[1] *See Jackson v. State*, 645 S.W.2d 303, 304 (Tex. Crim. App.1983).

In this case, the State was required to prove by a preponderance of the evidence that appellant violated the terms of his community service by consuming cocaine. The urinalysis report, viewed in a light most favorable to the revocation order, shows the presence of cocaine metabolites in appellant's system. There was testimony by a toxicologist that these metabolites are the end result of the breakdown of cocaine in the body. This is sufficient evidence to support the trial court's ruling. We find the trial judge did not abuse his discretion in revoking appellant's community supervision.

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[1] Although the Court of Criminal Appeals has not reached the issue, several courts of appeals have either impliedly or expressly found that factual sufficiency review is not available in community supervision revocation proceedings. *See Johnson v. State*, 943 S.W.2d 83, 85 (Tex. App.–Houston [1 st Dist.] 1997, no pet.) (declining to conduct a factual sufficiency analysis under the *Clewis* standard); *Brumbalow v. State*, 933 S.W.2d 298, 300 (Tex. App.–Waco 1996, pet. ref'd) (declining to extend *Clewis* to ancillary rulings); *Freeman v. State*, 917 S.W.2d 512, 514 (Tex. App.–Fort Worth 1996, no pet.) (noting that appellate review of an order revoking probation is limited to a determination of whether the trial court abused its discretion).

Appellant's sole point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed April 13, 2000.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

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