Affirmed as Reformed and Opinion filed October 28, 1999.

In The

Fourteenth Court of Appeals

NO. 14-98-00064-CR
NO. 14-98-00065-CR

ANTHONY SHINER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause Nos. 717,353 & 717,354

O P I N I O N

Appellant, Anthony Shiner, appeals the revocation of his probation. On appeal, he contends (1) the evidence is legally insufficient to support the judgment and order revoking community supervision, and (2) the trial court abused its discretion in finding the appellant used a controlled substance. We affirm as reformed.

Appellant was charged by two indictments with the felony offense of aggravated sexual assault of a child. In both cases, he pled no contest with an agreed recommendation by the State. *See* TEX. PEN. CODE ANN. § 22.021 (Vernon Supp. 1999). Pursuant to the plea bargain, the trial court found appellant

guilty of sexual assault of a child and assessed his punishment at confinement for 10 years in the Texas Department of Criminal Justice, probated for 10 years.

Among the conditions of appellant's community supervision were the following: avoid injurious or vicious habits, e.g. alcohol and controlled substances; report to his community supervision officer on the first day of each month; participate in sex offender treatment/counseling; register under the sexual offender program; participate in a community service work probation program; notify the Harris County Community Supervisions Department of any change in residence within 48 hours prior to the change, submit to random urine analysis, and +pay specified fees.

On November 26, 1997, the State filed a motion to revoke community supervision on both convictions. The State alleged appellant (1) did not report to his community supervisions officer at the beginning of each month; (2) did not make the HCCS aware of residence changes 48 hours prior to change on two different occasions; (3) did not participate in a community service work probation program; (4) did not pay his supervision fee; (5) did not participate in sex offender treatment; (6) and did not register as a sex offender within seven days. On December 17, 1998, the State amended its motion to include an allegation that appellant did not avoid injurious or vicious habits because his urine tested positive for THC.

At the hearing, the State abandoned the allegations concerning the positive urine samples, the supervision fees, and the registration violation. The hearing proceeded on the allegations that appellant moved without properly informing the HCCS, that he failed to meet with his supervising officer timely, that he did not participate in the community service work probation program, and that he did not participate in sex offender treatment.

At the hearings, the State presented testimony concerning the conditions of appellant's community supervision. Robin Rogers, a supervision officer with Harris County testified that appellant missed report dates and did not inform him of moves within 48 hours. Rogers additionally testified that appellant was not participating in sex offender treatment. Appellant testified that he forgot about scheduled meetings because he "messed up on the days." Appellant claimed he skipped treatment due to depression, interference with his 20-hour work schedule, and lack of transportation.

At the conclusion of the hearing, the Court found appellant violated the conditions of his community supervision by failing to report, moving without notification, and failing to attend sex offender treatment. The Court found the community service work probation allegation to be "not true." The Court then revoked appellant's probation and assessed punishment at ten years confinement in each case. The judgment, however, incorrectly reflects appellant violated his community supervision in that he tested positive for THC.

In point of error one, appellant claims the evidence is legally insufficient to support the judgment. Appellant contends the trial court abused its discretion in finding that he had used a controlled substance because there was no evidence of use. As a result, appellant contends that this court should reverse the judgment and order of the trial court and reinstate appellant's community supervision.

When a trial court specifically finds the probationer violated terms of his community supervision based on certain evidence, and that finding is not included in the judgment, the judgment should be reformed to reflect the trial court's findings. *See Mazloum v. State*, 772 S.W.2d 131 (Tex. Crim. App. 1989). Here, the trial court found that appellant violated several different conditions of his community supervision. The trial court mistakenly signed a judgment revoking community supervision for a violation that was not before the court.

Accordingly, we order the judgment reformed to reflect appellant violated the terms and conditions of his community supervision by failing to report to his probation officer on October 21st and 27th; by moving on October 14, 1997, without notifying HCCS 48 hours before his residence change; by moving again on October 25, 1997, without notifying HCCS 48 hours before his residence change; and by failing to attend sex offender treatment.

In his second point of error, appellant claims the trial court abused its discretion in finding that appellant committed the crime of using the controlled substance THC. In light of our disposition of the first point of error, appellant's second point of error is moot.

Accordingly, the judgment of the trial court is affirmed as reformed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 28, 1999.

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

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