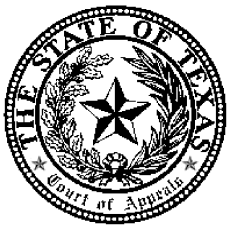
Affirmed and Opinion filed December 6, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01037-CR

ROBERT LEE WINTERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 780,574

O P I N I O N

Appellant Robert Lee Winters appeals his trial court's order revoking his community supervision. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was indicted on April 27, 1998, for possession of a firearm. He pleaded guilty and waived his right to a jury trial. The trial court found appellant guilty as charged and assessed punishment at six years' confinement and ordered him to pay a fine of $600.00. The trial court probated appellant's sentence and placed him on community supervision.

On March 10, 2000, the state filed a motion to revoke community supervision alleging that appellant had violated the terms of his probation by: (1) intentionally and knowingly causing bodily injury to Juanita Williams by striking her in the face with his hand; (2) failing to perform eight hours per month of community service for a period of four months; and (3) failing to successfully complete a community-based G.E.D. program by October 9, 1999.

Appellant entered a plea of not true to the state's allegations. The trial court conducted an evidentiary hearing on May 30, 2000, to determine whether appellant had violated the terms of his community supervision. The trial court found appellant had violated the conditions of his community supervision by: (1) assaulting Juanita Williams by striking her in the face with his hand; and (2) failing to perform eight hours per month of community service for a period of four months. The court revoked appellant's community supervision and assessed punishment at six years' confinement in the state penitentiary.

II. STANDARD OF REVIEW

In reviewing an order revoking probation, the only issue is whether the trial court abused its discretion. *Lloyd v. State*, 574 S.W.2d 159 (Tex. Crim. App.1978); *Cadell v. State,* 605 S.W.2d 275 (Tex. Crim. App. 1980). In conducting our review, we view the order revoking probation in the light most favorable to the trial court's decision. *Caddell*, 605 S.W.2d at 275. When a trial court finds several violations of probationary conditions, we affirm the order revoking probation if the proof of *any* allegation is sufficient. *See e.g.*, *Moore v. State,* 605 S.W.2d 924, 926 (Tex. Crim. App. 1980).

The state has the burden to establish, by a preponderance of the evidence, every element of the offense that is the basis for the revocation of probation. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984); *Wilson v. State*, 671 S.W.2d 120, 121 (Tex. App.–Houston [1st Dist.] 1984, pet. ref'd). The "preponderance of the evidence" standard is met when the greater weight of the credible evidence before the trial court creates a reasonable belief that a condition of probation has been violated. *Jenkins v. State*, 740

S.W.2d 435, 437 (Tex. Crim. App. 1983). When the state fails to meet its burden, it is an abuse of discretion for the trial court to issue a revocation order. *Cardona*, 665 S.W.2d at 493-94.

III. REVOCATION OF PROBATION

In his sole point of error, appellant contends that the trial court abused its discretion in revoking his probation. Specifically, appellant contends that there is insufficient evidence in the record to support a finding that he either failed to perform his required hours of community service or that he assaulted Juanita Williams by striking her in the face with his hand.

A. Assault

At the revocation hearing, the state offered the testimony of Houston police officer Michael Harp, who responded to a domestic violence call on March 4, 2000. Officer Harp arrived at the home of appellant and his wife, Juanita Williams to find Ms. Williams with a laceration above her eye. Officer Harp testified that Ms. Williams was very upset and identified appellant as the person who had struck her. Houston firefighters Roberto Munoz and Tony Southall, who also had been dispatched to the scene, testified that Ms. Williams appeared to be in great pain as a result of the laceration over her right eyelid. Like Officer Harp, they testified that Ms. Williams accused appellant of striking her in the face. At the revocation hearing, however, Ms. Williams denied that appellant had hit her. Instead, she claimed she had hit herself with a can of Raid insecticide.

In a revocation proceeding, the trial judge is the sole trier of the facts, the credibility of the witnesses and the weight to be given the testimony. *Diaz v. State*, 516 S.W.2d 154 (Tex. Crim. App. 1974); *Aguilar v. State*, 471 S.W.2d 58 (Tex. Crim. App. 1971). Reconciliation of conflicts and contradictions in evidence is within the province of the fact finder, and such conflicts will not call for reversal if there is enough credible testimony to support the conviction. TEX. CODE CRIM. PROC. ANN. art. 38.04 (Vernon 1979); *see also*

Bowden v. State, 628 S.W. 2d 782, 784. Furthermore, evidence is not insufficient merely because the appellant took the stand and offered a different version of the events. *Russell v. State,* 665 S.W.2d 771, 776 (Tex. Crim. App. 1983).

We find the record contains sufficient evidence to create a reasonable belief that appellant violated a term of his community supervision by striking Ms. Williams. Thus, the trial court did not abuse its discretion in revoking appellant's probation.

B. Failure to Perform Community Supervision

Appellant also denies that he failed to complete eight hours of community service each month for the period of four months. Appellant testified at the revocation hearing that he had attempted to complete the required hours of community service and thought that he had done so, thus putting himself in the position to complete his probation by 2004, as ordered by the court. The state offered the testimony of Ernest Gibson, Community Supervision Officer of the Harris County Community Supervision and Corrections Department. Gibson testified the department records reflected that appellant had failed to report the required eight hours a month community service for the months of February 1999, April 1999, July 1999, and September 1999. Failure to report constitutes sufficient grounds for revocation of probation. *See, e.g., Cole v. State,* 578 S.W.2d 127 (Tex. Crim. App. [Panel Op.] 1979); *see also Farran v. State*, 744 S.W.2d 327, 329 (Tex. App.–Houston [1st Dist.] 1988, no pet.).

The record contains sufficient evidence that appellant failed to complete the requisite community service. Accordingly, the trial court did not abuse its discretion in finding that appellant violated this condition of his probation.

IV. CONCLUSION

The state met its burden of proving that appellant violated the terms of his community supervision. The evidence is sufficient to support the order revoking appellant's probation.

Having found no abuse of discretion, we overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed December 6, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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