Affirmed and Opinion filed March 1, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00669-CR

FELICIA STOVALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 687,011

O P I N I O N

Appellant was charged in February 1995 with the felony offense of securing execution of a document by deception. *See* TEX. PEN. CODE ANN. § 32.46 (Vernon Supp. 2000). In May of that year, she pleaded guilty pursuant to a plea agreement and was sentenced to ten years' probation with a $500 fine. In April 1999, the State filed a motion to revoke appellant's probation, alleging she had violated the terms of her probation by fraudulently obtaining public assistance. After a hearing, the trial court found the allegation true, revoked appellant's probation, and assessed punishment at ten years in prison. We

affirm.

The evidence developed at the revocation hearing shows that in 1997, while she was on probation for welfare fraud, appellant filed an application to receive assistance from the Texas Department of Human Services. In her application, appellant was listed as having no vehicle. Based on the information provided by appellant, she was found eligible to receive food stamps and began receiving the assistance in August 1997. Vehicle registration records from the State Transportation Department show, however, that on August 6, 1997, appellant purchased an automobile for $8,885.88. She was seen driving the car. Appellant applied for assistance again in October 1997, January 1998, and June 1998. In each instance, she stated that she had no vehicle. The Human Service Department discovered that appellant owned an automobile, that her ownership was inconsistent with statements she had made to receive assistance, and that she had received approximately $3,250 in cash and benefits to which she was not entitled.

Appellant testified that even though a car was registered in her name, she had transferred possession of the car to a friend. She testified that her friend could not purchase a car because of his bad credit rating and that he began making payments on the car and took possession of the car to prevent it from being repossessed from her. She stated that because she did not have possession of the car, she considered the statements she made to welfare workers truthful.

In a single point of error, appellant complains the trial court abused its discretion by revoking her probation.

We review a trial court's order revoking probation by an abuse of discretion standard. *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). At a probation revocation hearing, the trial judge is the sole trier of fact, determining the credibility of witnesses and the weight to be given their testimony. *Jones v. State*, 787 S.W.2d 96, 97 (Tex.

App.—Houston [14th Dist.] 1990, pet. ref'd). We must review the evidence in the light most favorable to the trial court's ruling. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981).

Appellant does not complain of the sufficiency of the evidence. First, rather, she complains that the trial court failed to consider certain mitigating circumstances, namely, that appellant at the time of the hearing was working and supporting her family. Appellant complains the court did not "consider the difficulty of a single parent making low wages." Appellant cites no relevant authority on this issue and thus waives any complaint. *See* TEX. R. APP. P. 38.1(h); *Coble v. State*, 871 S.W.2d 192, 202 (Tex. Crim. App. 1993). In connection with appellant's substantive argument, however, the record does not support her complaint. Appellant testified and put before the trial court evidence of her circumstance. Nothing in the record suggests the trial court failed to consider her situation. Appellant has failed to demonstrate error.

Second, appellant complains that the sentence, ten years in prison, is disproportionate to the amount of assistance alleged to have been inappropriately received, approximately $3,000. Again, appellant waives her argument by failing to cite authority. *See Coble*, 871 S.W.2d at 202. Moreover, appellant was not sentenced to ten years in prison for defrauding the state of $3,000. She was sentenced originally to ten years' probation for another instance of welfare fraud, collecting food stamps and Aid to Families with Dependent Children while employed. The court may have taken into account that appellant was on probation for welfare fraud when she violated her probation by committing another act of welfare fraud. The sentence was within the statutory range for a third-degree felony. *See* TEX. PEN. CODE ANN. § 12.34 (1994). Appellant has failed to demonstrate error.

Third, appellant complains that the court erred by making certain comments during sentencing, comparing the "credibility of the appellant to that of the President of the United States." At the close of the sentencing hearing, the court made the following remarks:

> But, basically, what I've heard today is that you lied on your application, but that you didn't lie [sic] because they didn't ask you the right question.
>
> Now, we've spent the better part of a year and a half listening to someone much higher than both of us saying the same thing. It's lying when the President says it. It's lying when you say it.

Appellant cites no relevant authority suggesting the trial court erred. *Coble*, 871 S.W.2d at 202. Moreover, appellant has failed to demonstrate she was harmed by the comments.

Finally, appellant alleges that the court considered evidence of appellant's criminal history, which was not before the court. In connection with appellant's probation history, the court below made the following remarks:

> Based on the testimony in this case, the evidence presented to me, I am going to revoke your probation. Ms. Stovall, you've had more probations than any person I've ever met. You've been on probation five times, including four misdemeanors, including two thefts as a misdemeanor.
>
> It's amazing how you've been able to avoid what you would at this point are going to get, which is incarceration.

Appellant argues that the court was considering her probation history, which was not before the court. At trial, appellant failed to object to the court's consideration of her probation history and, thus, waived any complaint. *See* TEX. R. APP. P. 33.1. Nor has appellant cited relevant authority on appeal. *See Coble*, 871 S.W.2d at 202 Nevertheless, the record before this court does not reveal error. Appellant's probation history was not made part of the trial record, and thus is not part of the appellate record. We cannot, therefore, determine whether the trial court erred. Although, the record contains no evidence of appellant's probation history, the information may have been included in a presentence investigation report, which often is not admitted into evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 42.12, § 9 (Vernon Supp. 2000). *See also* 42 GEORGE E. DIX & ROBERT O.

DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 38.112 (1995)(finding no requirement that report be formally admitted into evidence in penalty phase of case). Appellant does not argue that she was denied a chance to read any presumed presentencing report, nor does she argue that she was denied opportunity to offer evidence of the factual inaccuracy of any presumed report. *See* art. 42.12, § 9(d), (e). Appellant does not complain, in fact, that the trial court's remarks reflected a factually incorrect understanding of her probation history. Appellant has failed to demonstrate error.

The record shows that during the revocation hearing, the trial court took evidence, including testimony from appellant and favorable testimony from appellant's employer. The trial court did not abuse its discretion in finding the State's allegations true and in sentencing appellant to ten years in prison. We overrule appellant's single point of error and affirm the judgment of the court below.

PER CURIAM

Judgment rendered and Opinion filed March 1, 2001.
Panel consists of Justices Anderson, Hudson, and Seymore.
Do Not Publish — TEX. R. APP. P. 47.3(b).