Affirmed and Opinion filed July 6, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00837-CR

ANTHONY MILLIGAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 25th District Court
Colorado County, Texas
Trial Court Cause No. 96-93

O P I N I O N

The State charged Anthony Milligan, appellant, with murder. He pleaded not guilty to the charge and the case was tried before a jury. The jury found him guilty and assessed punishment at ten years confinement, probated for a term of ten years, and a $10,000 fine. Subsequently, the State moved to revoke appellant's probation. Following a hearing, the trial court revoked appellant's probation and assessed punishment at ten years confinement in the Texas Department of Criminal Justice – Institutional Division. In his sole point of error, appellant contends that the evidence is insufficient to prove that he violated the conditions of his probation. We affirm.

In its Amended Motion to Revoke Probation, the State alleged that appellant violated several of his conditions of probation, including: (1) failure to avoid injurious or vicious habits by testing positive for opiates, (2) failure to report in person to the probation department on March 3, 1997, (3) failure to report to his community supervision officer by mail for several months, (4) failure to pay his probation fees, and (5) failure to pay his restitution. The trial court found that the State proved by a preponderance of the evidence that appellant failed to report in person on March 3, 1997, and that he failed to report to his community supervision officer by mail on the dates alleged in the motion. The court found that the other allegations were not supported by the evidence.

In his sole point of error, appellant contends that the trial court abused its discretion in revoking his probation because the evidence was insufficient to prove that he had notice to report by mail and to report in person on March 3, 1997.

Appellate review of an order revoking community supervision is limited to determining whether the trial court abused its discretion. *See Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App.1984). An abuse of discretion occurs where the trial judge's decision was so wrong that it falls outside the zone within which reasonable persons might disagree. *See Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App.1992). We must examine the evidence in the light most favorable to the trial court's order. *See Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981); *Galvan v. State*, 846 S.W.2d 161, 162 (Tex. App.–Houston [1st Dist.] 1993, no pet.).

In a revocation hearing, the State must prove by a preponderance of the evidence that the probationer violated the terms and conditions of his community supervision. *See Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App.1993). This standard is met when the greater weight of the credible evidence creates a reasonable belief that the defendant violated a condition of his community supervision as the State alleged. *See Martin v. State*, 623 S.W.2d 391, 393 n. 5 (Tex. Crim. App.1981). In a community supervision revocation hearing, the trial judge is the sole trier of fact. *See Jones v. State*, 787 S.W.2d 96, 97 (Tex. App.–Houston [1st Dist.] 1990, pet. ref'd). The trial judge also determines the credibility of the witnesses and the weight to be given to their testimony. *See id.* He may accept or reject

any or all of the witness' testimony. *See Mattias v. State*, 731 S.W.2d 936, 940 (Tex. Crim. App.1987).

We find that the trial judge did not abuse its discretion by finding that appellant failed to report by mail on the dates alleged in the State's Amended Motion to Revoke Probation. The judgment in appellant's murder conviction required appellant to report by mail as directed by his probation officer. The judgment shows that the clerk of court provided appellant with a copy of the terms and conditions of his probation. Appellant's attorney signed the acknowledgment of the conditions. The State's probation records showed that the probation officer reviewed all of the terms of probation with appellant. Probation Officer Wessels told appellant that he was required to report by mail. Appellant did report by mail in March 1996 and April 1996, but then stopped reporting.

Appellant said that he did not recall being told to report on specific dates. During cross-examination, the prosecutor asked appellant if he did not know he was required to report by mail. Appellant told the court, "I am not saying that – You know, I am saying that I didn't know like if I missed these particular months that they say I missed writing in, I didn't know that would have an effect on me, you know." Appellant did not deny having notice to report by mail. He only claimed that he was not aware of the effect of not reporting by mail to his probation officer. We find that the State offered sufficient evidence to support the trial court's finding.

We also find that the trial court did not abuse its discretion in finding that appellant failed to report in person on March 3, 1997, for an administrative hearing. The probation records showed that the State sent appellant notice of the hearing on February 18, 1997. The letter was sent to appellant's address at 7402 San Lucas Street in Houston. Appellant admitted that this was his address. The letter was not returned. In fact, none of the letters ever sent to appellant at the San Lucas address were returned. The evidence supports the trial courts finding.

We overrule appellant's sole point of error and affirm the judgment of the trial court.

/s/ Sam Robertson
Justice

Judgment rendered and Opinion filed July 6, 2000.

Panel consists of Justices Robertson, Sears, and Cannon.[*]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[*] Senior Justices Sam Robertson, Ross A. Sears, and Bill Cannon sitting by assignment.