No. 14-24-00612-CR

In The Court of Appeals
For the Fourteenth District of Texas

Leslie Parrish,
Appellant

v.

The State of Texas,
Appellee

On Appeal from Cause Number 1200670
From the 179th District Court of Harris County, Texas

Brief for Appellant

Oral Argument Not Requested

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STATEMENT OF THE CASE

Leslie Parrish was indicted on January 26, 2009, on a charge of Intoxicated Manslaughter occurring on May 13, 2007. (CR 15).[1] This was refiled, and a new indictment was filed the same day. (CR 9). The State moved to abandon the deadly weapon paragraph. (CR 166). A judge sentenced her to 6 years in the Texas Department of Criminal Justice. (CR 186-187) There was no fine. (CR 186). This sentence was a shock probation that imposed 10 years of probation beginning June 2, 2010. (CR 188). The judge ordered probation to expire on November 28, 2020. (CR 188). Conditions of supervision were imposed. (CR 189-192). The conditions of supervision underwent two substantive amendments: first, on September 30, 2014, and later, on October 6, 2020. The latter corrected the erroneous expiration date and clarified the sentence as 6 years imprisonment with 10 years community supervision. (CR 189-192, 193-196, 197-200). An amended Motion to Revoke Community Supervision was filed on November 22, 2016. (CR 202-204). Capias

[1] The Clerk's Record on appeal is designated by "CR" followed by page number.

issued November 22, 2016. (CR 205). The Sheriff's Return on the Capias was on April 9, 2024. (CR 205). The court revoked probation and sentenced Parrish to 6 years in the Texas Department of Criminal Justice. (CR 300-303; RR 73; 75).2 The judgment included a fine of $100. (CR 401). On August 16, 2024, she filed a notice of appeal, and the trial court certified her right to appeal. (CR 411-412). No motion for new trial was filed.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 38.1(e), oral argument would not materially assist the Court because the dispositive issues have been authoritatively decided, and the facts and legal arguments are adequately presented in the brief and record on appeal.

[2] The Reporter's Record on appeal is designated by volume number, followed by "RR," followed by page number.

Issues Presented

1. Whether the trial court abused its discretion in revoking Parrish's community supervision where the State failed to exercise due diligence in executing the capias warrant as required by Article 42A.109 of the Texas Code of Criminal Procedure.

2. The evidence was legally insufficient to establish by a preponderance of the evidence that Parrish failed to report and failed to maintain employment.

3. The trial court abused its discretion in revoking community supervision for failure to pay fees because the State failed to prove Parrish's ability to pay as required by Article 42A.751(i) of the Texas Code of Criminal Procedure.

4. The trial court erred by including a $100 fine in the written judgment not orally pronounced at sentencing.

STATEMENT OF FACTS

Following her January 26, 2009, indictment for intoxication manslaughter, Parrish received a six-year sentence in the Texas Department of Criminal Justice, subsequently modified to shock probation.[3] The trial court placed her on community supervision for ten years beginning November 29, 2010, subject to standard probation conditions including monthly reporting and employment requirements.[4]

Throughout her supervision period, Parrish demonstrated substantial compliance through consistent partial payments totaling approximately $3,500 and maintained employment, though documentation challenges arose.[5] Officer Walker, Parrish's supervision officer, testified that despite her inability to meet full monthly obligations, Parrish consistently made good-faith payment efforts.[6]

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[3] CR 15, 186-187.

[4] CR 188, 197.

[5] 1RR 28-29.

[6] 1RR 27.

On November 22, 2016, the State filed a motion to revoke Parrish's community supervision, alleging violations of multiple conditions, including failure to report for a court appearance on November 15, 2016, failure to maintain employment, and failure to pay required fees.[7] However, neither of the State's witnesses at the revocation hearing had personal knowledge of these alleged violations.[8]

A capias warrant issued upon filing the motion to revoke remained unexecuted until April 9, 2024 –nearly eight years after its issuance and more than three years past the expiration of Parrish's probation term in November 2020.[9] During this prolonged period, the Harris County Community Supervision and Corrections Department made only one unverified attempt to contact Parrish, mailing letters in May 2018 to her and two references.[10] Court Liaison Officer Dedria Hunter confirmed the probation file

[7] CR 202-204; State's Exhibit 2.

[8] 1 RR 33-34, 46.

[9] CR 205.

[10] 1 RR 45, 59-60.

contained no notation of anyone contacting Parrish about the November 15, 2016 court appearance that formed the basis of the State's primary violation allegation.[11]

[11] 1 RR 46.

Summary Of The Argument

1. The trial court abused its discretion in revoking Parrish's community supervision where uncontroverted evidence established the affirmative defense of due diligence under Article 42A.109. The State's sole documented attempt at contact over eight years—untracked mail correspondence in May 2018 to an address not confirmed as her last known address—fails as a matter of law to satisfy the statutory requirement of attempted in-person contact at a defendant's last known address. *See Garcia v. State*, 387 S.W.3d 20, 24 (Tex. Crim. App. 2012).

2. The State failed to meet its burden of proving probation violations by a preponderance of the evidence. Neither prosecution witness possessed personal knowledge of the alleged violations: Officer Walker, who supervised Parrish until September 2016, expressly disclaimed knowledge of any reporting violation, while Officer Hunter merely recited allegations without substantive evidence of non-compliance. *See Cochran v. State*, 78 S.W.3d 20, 28 (Tex. App.—Tyler 2002, no pet.).

3. The State failed to meet its burden regarding Parrish's alleged failure to pay supervision fees. The evidence demonstrated substantial partial compliance through payments totaling more than $3,500. The State presented no evidence of Parrish's ability to pay—a prerequisite to revocation under Article 42A.751(i). The record instead shows good-faith efforts to meet financial obligations within her means.

4. The trial court erred by including a $100 fine in the written judgment that was never orally pronounced at sentencing. Under Texas law, when a conflict exists between the oral pronouncement of a sentence and the written judgment, the oral pronouncement controls. Because no fine was pronounced in open court, its inclusion in the judgment constitutes reversible error.

ARGUMENT AND AUTHORITIES

ISSUE NUMBER ONE

THE TRIAL COURT ABUSED ITS DISCRETION IN REVOKING HER COMMUNITY SUPERVISION FOR FAILURE TO REPORT BECAUSE PARRISH ESTABLISHED THE AFFIRMATIVE DEFENSE OF DUE DILIGENCE UNDER ARTICLE 42A.109.

A. STANDARD OF REVIEW AND PRESERVATION OF ERROR

The trial court's decision to revoke community supervision is reviewed for abuse of discretion. *Rickles v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). While the State bears the initial burden of proving violations by preponderance, once a defendant raises the statutory due diligence defense, the burden shifts to establish that defense by preponderance. *Garcia v. State*, 387 S.W.3d 20, 23 (Tex. Crim. App. 2012). This burden-shifting framework structures the analysis of the trial court's exercise of discretion.

Parrish preserved this issue by raising the due diligence defense during the revocation hearing. (1RR 68-69).[12] This provided

[12] The due diligence defense is found in two places in Chapter 42A of the Code of Criminal Procedure: in both Subchapter C and Subchapter P. Parrish cites 42A.756 which is the incorrect article. (1RR 68). *See* TEX CRIM. PROC. CODE article 42A.756. Parrish cited to the due diligence affirmative defense for a hearing under Article 42A.751(d) under Subchapter P. *See* TEX CRIM. PROC. CODE art. 42A.751(d). Those hearings are for offenses where an individual is on probation for including prostitution and certain drug offense.

sufficient notice to the judge.[13]

B. Statutory Framework for Due Diligence

Article 42A.109 of the Texas Code of Criminal procedure establishes specific requirements for the due diligence defense:

> A. Elements of the Defense
>
> a. No supervision officer, peace officer, or other officer with arrest authority
>
> b. Contacted or attempted to contact the defendant in person
>
> c. At defendant's last know residence or employment address
>
> d. Following issuance of capias for alleged violation

See Tex Crim. Proc. Code art. 42A.109.

The Court of Criminal Appeals has emphasized that this statutory defense replaced the common law due diligence doctrine, creating clear, specific requirements for the State's obligations.

The correct due diligence affirmative defense is 42A.109. Tex Crim. Proc. Code art. 42A.109. This is the statute for a hearing under 42A.108.Tex Crim. Proc. Code art. 42A.109.

[13] The language between the 42A.756 and 42A.109 is identical excepting the hearing statute the two refer the reader to. *Compare* Tex Crim. Proc. Code art. 42A.756 and Tex Crim. Proc. Code art. 42A.109.

Garcia, 387 S.W.3d at 24. Notably, the statute mandates attempted in-person contact, a requirement that cannot be satisfied through alternative methods of communication.

C. Analysis of Due Diligence Evidence

1. Evidence Establishing Due Diligence Defense

A. Single Documented Contact Attempt

The record demonstrates a single attempt at contact through untracked mail correspondence to an address not known as her last point of contact in May 2018, nearly eighteen months after warrant issuance. (1RR 59-60). This isolated attempt:

- Lacked tracking or delivery confirmation
- Did not constitute in-person contact as statutorily required
- Represented the sole documented effort over eight years.

B. Department's Access to Current Information

Officer Walker's testimony established the department maintained current residential and employment information throughout supervision. (1RR 26-27). Despite possessing valid contact information, the record reveals:

- No attempts at in-person contact at known addresses
- No explanation for failure to utilize available information
- No evidence of changed circumstances preventing contact.

2. State's Failure to Rebut Defense

A. Complete Absence of In-Person Contact Attempts

Court Liaison Officer Hunter confirmed the probation file contained no notation of any in-person contact attempts at either Parrish's residence or workplace. (1RR 46). This admission directly establishes the defense's primary element.

B. Duration Exceeding Established Standards

The nearly eight-year delay between warrant issuance and execution far surpasses the two-year period the Court of Criminal Appeals found problematic in *Garcia*. *Garcia* 387 S.W.3d at 25. This extraordinary delay, coupled with minimal effort at contact, demonstrates a systematic failure of due diligence.

3. Legal Significance

Under *Garcia*, the State cannot overcome the due diligence defense through:

1. Mere correspondence without in-person attempts
2. Claims of resource limitations
3. Administrative justifications for extended delay

Garcia, 387 S.W.3d at 24-25.

The constitutional implications of this violation are harmful. The failure to attempt in-person contact despite having current information raises due process concerns, particularly given the extended period between warrant issuance and execution. *See Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983) (discussing procedural safeguards in revocation context).

Texas Courts have taken this even further and decided the due diligence defense does not deprive them of the protections of the defense. In *Peacock v. State*, the Court of Criminal Appeals reversed the court of appeals —over the dissent of the presiding judge —holding that the state did not exercise due diligence in apprehending the probationer. 77 S.W.3d 285, 289 (Tex. Crim. App. 2002), overruled on other grounds. In dissent, Presiding Judge Keller argues that the State did not fail to exercise due diligence in

apprehending if the probationer does not have clean hands as evidenced by failing to report and not responding to mail sent by authorities. *Peacock*, 77 S.W.3d at 289-292 (Keller, P.J. dissenting).

The trial court's decision to revoke despite uncontroverted evidence establishing the due diligence defense constitutes an abuse of discretion because it disregards the explicit statutory requirements, ignores controlling precedent from *Garcia* and it fails to account for the complete absence of required in-person contact attempts.

D. PRAYER

The trial court abused its discretion in revoking community supervision despite Parrish's successful assertion of this statutory defense. This court should remove the finding of violation by a failure to report.

ISSUE NUMBER TWO

THE EVIDENCE WAS LEGALLY INSUFFICIENT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT PARRISH FAILED TO REPORT AND FAILED TO MAINTAIN EMPLOYMENT.

A. STANDARD OF REVIEW

When reviewing a trial court's revocation of community supervision, the State must establish violations by a preponderance of the evidence. *Rickels v. State*, 202 S.W.3d 759, 763-64 (Tex. Crim. App. 2006). Under this standard, the State must present sufficient evidence to create a reasonable belief that the defendant violated a condition of community supervision. *Id*. at 764. Although reviewing courts must view the evidence in the light most favorable to the trial court's ruling, they cannot sustain revocation based on mere speculation or unsupported allegations. *Cherry v. State*, 215 S.W.3d 917, 919 (Tex. App.—Fort Worth 2007, pet. ref'd).

B. ANALYSIS OF ALLEGED VIOLATIONS

1. Failure to Report

The State's allegation that Parrish failed to report for a November 15, 2016, court admonishment fails for two independent

reasons. First, the November 15 date deviated from Parrish's established reporting date of the 29th. (1RR 66). The State presented no evidence that Parrish received notice of this additional required appearance. Officer Hunter confirmed the probation file contained no documentation showing anyone attempted to notify Parrish of the court date. (1RR 46).

Second, neither prosecution witness could establish the alleged reporting violation through competent testimony. Officer Walker had transferred departments before November 2016 and explicitly testified she had no knowledge of any reporting violation. (1RR 33-34). Officer Hunter's testimony derived solely from reviewing the motion to revoke, and she admitted having no personal knowledge of the violations. (1RR 42, 46). A Court of Appeals has established that allegations in a motion, standing alone, cannot satisfy the State's burden of proof. *Cochran v. State*, 78 S.W.3d 20, 28 (Tex. App.—Tyler 2002, no pet.).

2. Alleged Employment Non-Compliance

The record not only fails to establish unemployment but affirmatively demonstrates Parrish's consistent employment status

throughout supervision. Officer Walker provided direct testimony that Parrish maintained employment during the supervision period. (1RR 26). When asked specifically about Parrish's employment status, Walker confirmed her belief that Parrish remained employed. (1RR 26-27). This testimony finds additional support in Parrish's substantial supervision fee payments, which totaled approximately $3,500 throughout supervision. (1RR 28-29).

The State's criticism focused exclusively on documentation formalities rather than actual employment status. Walker testified that Parrish reported her employer had ceased providing pay stubs, creating difficulties with formal verification. (1RR 26). However, the record contains no evidence suggesting any period of actual unemployment. Moreover, Parrish's regular fee payments directly contradict any suggestion of prolonged unemployment.

C. Legal Insufficiency of State's Evidence

The State's case relied entirely on witnesses who lacked personal knowledge of the alleged violations. Their testimony, when examined carefully, supported rather than contradicted Parrish's compliance with supervision conditions. The greater

weight of credible evidence demonstrates substantial compliance, with no competent evidence establishing the alleged violations.

The record contains no evidence that Parrish received notice of the November court date. Instead, it shows consistent employment throughout the supervision period, documented by regular payments indicating ongoing income and good faith efforts at documentation compliance. The State cannot meet its burden through bare allegations in a motion to revoke or speculation about missing documentation. *See Cochran*, 78 S.W.3d at 28. The State has failed to prove either of the alleged violations by a preponderance of the evidence.

D. Conclusion and Prayer

The evidence presented cannot sustain the State's burden of proving violations by a preponderance of the evidence. Instead, the record demonstrates substantial compliance with supervision conditions. The trial court's revocation on these grounds constitutes an abuse of discretion unsupported by legally sufficient evidence. Prayer to find not true to this violation due to legal insufficiency.

Issue Number Three

THE TRIAL COURT ABUSED ITS DISCRETION IN REVOKING COMMUNITY SUPERVISION FOR FAILURE TO PAY FEES BECAUSE THE STATE FAILED TO PROVE ABILITY TO PAY AS REQUIRED BY ARTICLE 42A.751(I).

A. Governing Legal Framework

Article 42A.751(i) of the Texas Code of Criminal Procedure imposes a specific evidentiary burden when the State seeks revocation based on failure to pay fees. The statute requires the State to "prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge." TEX. CRIM. PROC. CODE art. 42A.751(i). This requirement implements constitutional due process protections articulated in *Bearden v. Georgia*, which prohibits imprisonment for inability to pay absent evidence of willful nonpayment. 461 U.S. 660, 672-73 (1983).

B. Standard of Review

Community supervision revocation proceedings, while administrative in nature, are governed by established judicial proceeding standards. *Ex parte Doan*, 369 S.W.3d 205, 212 (Tex. Crim. App. 2012). A trial court's revocation order is reviewed for abuse of discretion. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex.

Crim. App. 2013). This standard requires examination not of whether the appellate court would have decided differently, but whether the trial court acted without reference to guiding rules or principles. *Carreon v. State*, 548 S.W.3d 71, 77 (Tex. App.—Corpus Christi 2018, no pet.). A trial court abuses its discretion when its decision falls outside the zone of reasonable disagreement. *Armstrong v. State*, 82 S.W.3d 444, 448 (Tex. App.—Austin 2002, pet. ref'd).

C. Analysis of Payment Evidence

1. Evidence of Good Faith Compliance

The record demonstrates Parrish's substantial efforts to comply with financial obligations despite apparent economic constraints. Officer Walker testified that Parrish paid approximately $3,500 in total fees throughout supervision. (1RR 28-29). More significantly, Walker confirmed that Parrish consistently made partial payments toward her obligations each month, even when unable to satisfy the full monthly amount. (1RR 27). This pattern of regular partial payments strongly indicates good-faith compliance within Parrish's financial means.

2. State's Failure to Prove Ability to Pay

The State presented no evidence addressing Parrish's ability to pay the required fees. The record contains no evidence of her income, earnings, living expenses, or financial obligations. The State failed to demonstrate that Parrish possessed the means to pay more than she did, or that her partial payments reflected unwillingness rather than inability to pay. This complete absence of evidence regarding financial ability is fatal to revocation on this ground.

D. CONSTITUTIONAL IMPLICATIONS

The trial court's revocation without inquiry into ability to pay raises serious due process concerns under *Bearden*. The Supreme Court explicitly held that revoking probation for failure to pay fines without investigating the ability to pay and considering alternatives to imprisonment violates due process. *Bearden* 461 U.S. at 672-73. The record here shows no such inquiry occurred before revocation.

Even if some fee arrearage existed, revocation was improper absent evidence distinguishing between inability and unwillingness

to pay. The State's failure to present any evidence of Parrish's financial ability, combined with the record evidence of her good-faith payment efforts, compels the conclusion that the trial court abused its discretion in revoking community supervision. *Cf.* *Addison v. State*, No. 01-23-00294-CR, —S.W.3d.—, 2024 WL 3762553 (Tex. App.—Houston [1st Dist.] Aug. 13, 2024, pet. ref'd) (court erred in ordering repayment of fees when it did not conduct an ability to pay hearing and there was no evidence that the defendant's financial resources were sufficient to pay the costs assessed.)

E. PRAYER

Reviewing courts are not permitted to use a "divide and conquer" approach to evaluate evidence's sufficiency. Rather, a reviewing court must consider the evidence's combined and cumulative force. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). For these reasons, if the sole remaining violation of the terms and conditions of community supervision is the failure of an indigent individual to pay fees – where even the State admits

she did pay some – the judgment is an abuse of discretion that denied Parrish due process of the law.

Issue Four

THE TRIAL COURT ERRED BY INCLUDING A $100 FINE IN THE WRITTEN JUDGMENT THAT WAS NOT ORALLY PRONOUNCED AT SENTENCING

A. Applicable Law

Article 42.03, section 1(a) of the Texas Code of Criminal Procedure mandates that sentence be pronounced in the defendant's presence. TEX. CRIM. PROC. CODE art. 42.03, § 1(a). The Court of Criminal Appeals has consistently held that the oral pronouncement controls when conflict exists between oral pronouncement and written judgment. *Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003).

B. Analysis of Sentencing Record

The record reveals a clear variance between the trial court's oral pronouncement and written judgment. At the revocation hearing, the court pronounced only a six-year sentence of imprisonment, making no mention of any fine. (RR 73, 75). Despite this omission from the oral pronouncement, the written judgment improperly includes a $100 fine. (CR 401).

C. REQUIRED REMEDY

This exact situation was addressed in *Taylor v. State*, where the Court of Criminal Appeals held that the inclusion of an unpronounced fine in the written judgment following revocation requires modification to conform to the oral pronouncement. *Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004). The procedural posture here mirrors *Taylor* precisely, requiring the deletion of the unpronounced fine from the judgment.

D. CONCLUSION

The trial court's inclusion of an unpronounced $100 fine in the written judgment constitutes a reversible error. Under controlling precedent from the Court of Criminal Appeals, this Court must modify the judgment to delete the fine, conforming the written judgment to the sentence pronounced in open court.

Conclusion and Prayer

For the reasons stated above, Parrish prays that this Honorable Court sustains her issues, reverses the judgment of findings of true to violating her community supervision as entered below, and renders a verdict of not true and dismisses the motion to adjudicate or remand the case to the trial court for a hearing.

Respectfully submitted,

/s/ Curtis Barton

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/s/ *Curtis Barton*

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