

No. 01-24-00360-CR

**IN THE
FIRST COURT OF APPEALS
FOR THE STATE OF TEXAS**

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
9/6/2024 4:34:02 PM
DEBORAH M. YOUNG
Clerk of The Court

Darius Spates,

Appellant,

vs.

The State of Texas,

Appellee.

BRIEF FOR APPELLANT

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Oral Argument Requested

Identity of Parties and Counsel

So the members of this Honorable Court can determine disqualification and recusal, Appellant certifies the following is a complete list of the parties and their attorneys in accordance with Texas Rule of Appellate Procedure 38.1(a).

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Darius Spates,

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BRIEF FOR APPELLANT

**TO THE HONORABLE JUDGES OF THE FIRST COURT OF
APPEALS:**

Statement of the Case

Darius Spates was first arrested for Evading Arrest or Detention with a Vehicle on November 10, 2022 (C.R. at 6).¹ The trial court accepted Spates' guilty plea, deferred a finding of guilt, and placed

¹ Citations to the single-volume Clerk's Record appear herein as C.R. at [page number].

Spates on deferred adjudication community supervision for a period of two years (C.R. at 38). Before the two-year period expired, Spates was again arrested for Evading Arrest or Detention With a Vehicle on July 30, 2023 (C.R. at 48; R.R. at 6).² On August 1, 2023, the State filed a motion to adjudicate guilt, and, on April 23, 2024, a hearing was convened in the trial court on the State's motion (C.R. at 48-50, 61; R.R. at 5). As a result of the hearing, the trial court found that Spates violated his conditions of community supervision, adjudicated him as guilty for the November 2022 offense, and sentenced him to five years in TDCJ custody (C.R. at 61). Spates filed his Notice of Appeal on May 1, and the trial court appointed undersigned Counsel to represent Spates on appeal six days later (C.R. at 68, 71).

Statement Regarding Oral Argument

The sole issue presented herein pertains to an issue which Counsel believes this Court has not yet addressed. Specifically, the question presented herein concerns whether the record must accurately reflect that a defendant was informed of the conditions of his

² Citations to the single-volume Reporter's Record appear herein as R.R. at [page number].

supervision at the time that he agreed to deferred adjudication for him to be subsequently found to have violated those very conditions of supervision.

Issue Presented

- In a case involving a defendant whose adjudication of guilt has been deferred, if the record does not reflect that the trial court either orally informed the defendant of the conditions of community supervision or that the defendant acknowledged receiving the conditions of his community supervision by signing a copy of the conditions, does a trial court abuse its discretion when it subsequently finds that a defendant violated those very conditions of his community supervision?

Statement of the Facts

Darius Spates was first arrested for Evading Arrest or Detention with a Vehicle on November 10, 2022 (C.R. at 6). On May 18, 2023, Spates pled guilty and entered into a two-year period of deferred adjudication (C.R. at 38). The record clearly reflects that, on that day, Spates signed a list of admonishments which made clear he understood what rights he was waiving by pleading guilty and that he would

subsequently be adjudicated guilty if he violated any of the conditions of his supervision (C.R. at 32-35). While making clear the consequences of a violation, the document did not advise Spates regarding what those conditions of supervision consisted of. *Id.* The trial court appears to have signed Spates' conditions of community supervision on that day, but Spates' signature does not appear on that document, and the record does not reflect he was otherwise advised of the conditions on that day (C.R. at 41-43).

Spates was subsequently arrested, a second time, for Evading Arrest or Detention with a Vehicle on July 30, 2023 (C.R. at 48; R.R. at 6-7). The following day, the State filed a motion that asked the trial court to adjudicate Spates' guilt for the 2022 offense (i.e., the initial offense for which the adjudication of his guilt had been deferred) (C.R. at 48-50). Of the twenty-three terms of community supervision, the State alleged that Spates violated nine of the provisions. *Id.*

Specifically, the State alleged that Spates violated provisions numbered: 1 (by evading arrest on July 30, 2013); 9 (by failing to submit a non-diluted, valid, unaltered urine sample); 12 (by failing to submit to an evaluation of his education level); 15, 17, and 18 (by failing to pay

various fees); and 22 and 23 (by failing to attend various classes) (C.R. at 48-49).

Only on November 17, 2023—three and a half months after he had been arrested a second time and three and a half months after the State filed its motion that asked the trial court to adjudicate his guilt—does the record suggest that Spates signed the conditions of community supervision (C.R. at 45; R.R. at 93).³

On April 23, 2024, the trial court convened a hearing on the State’s motion to adjudicate guilt (R.R. at 5; C.R. at 61). During that hearing, court liaison officer Johnathan Charles testified that he believed that the reason Spates’ signature did not appear on the May 18, 2023, copy of Spates’ conditions of community supervision is because of some glitch with the software used to capture signatures (R.R. at 21). Charles testified he believed that Spates signed the conditions and that the system would not have allowed others to sign the document unless

³ Although Spates did not dispute at trial that the November 27, 2023, signature was his, Counsel notes the signature differs significantly from the signature on all the other documents in the record purportedly signed by Spates. *Compare* C.R. at 45 *with* C.R. at 18, 19, 21, 23, 26, 29, 35, 37, 40, 47, 54, 56, 60, 66, 67, 68.

Spates first signed it (R.R. at 21, 25).⁴ Charles had never known the software used by the county to capture signatures to previously suffer from the glitch he now believed was responsible for Spates' signature not appearing on the May 18, 2023, copy of Spates' conditions of supervision (R.R. at 25). Spates' probation officer testified that at some point before July 30, 2023, Spates was made aware of the conditions of his community supervision, but the record contains no evidence that he signed a copy of the conditions or any other document that would substantiate this testimony. *See* R.R. at 30-31.

Because the record did not reflect Spates signed the conditions of his supervision on May 18, 2023, or was otherwise made aware of the conditions on that day, when the State offered a copy of the May 18 conditions into evidence, trial counsel argued the May 18 copy of the conditions of supervision should not be admitted into evidence because they were irrelevant (R.R. at 17 ("And so because the signature is not present, I would object to the relevancy of this document regarding this

⁴ While Charles testified that he was present on May 18 and that Spates signed the document, his testimony at least suggests his recollection of this having happened is due to his belief that others could not possibly have signed the document unless Spates first signed. *See* R.R. at 21, 25.

hearing.”)). The trial court admitted the conditions into evidence over trial counsel’s objection (R.R. at 18).

As a result of the hearing, the trial court found that Spates violated the conditions of his community supervision, adjudicated Spates as guilty for the 2022 offense, and sentenced Spates to five years in TDCJ custody (C.R. at 61-62; R.R. at 71, 74).

Summary of the Argument

As the Texas Court of Criminal Appeals (“CCA”) has recognized, community supervision is a contractual relationship between the trial court and the offender. *Speth v. State*, 6 S.W.3d 530, 534 (Tex. Crim. App. 1999). As such, in order for the contract to be valid, both parties must be aware of and assent to the contract’s terms at the time of its making. Because the record does not clearly reflect that Spates was made aware of the terms of his contract with the court (i.e., the conditions of his supervision) at the time the contract was made, the trial court abused its discretion when it subsequently found that Darius Spates violated the conditions of his supervision.

Argument

Because the record does not clearly reflect Spates was aware of or assented to the conditions of his community supervision on May 18, 2023, the trial court abused its discretion in finding that Spates violated the conditions of his community supervision.

A. The legal standard

Appellate review of an order adjudicating guilt is limited to determining whether the trial court abused its discretion. Tex. Code Crim. Proc. art. 42A.108(b); *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The trial court's decision to adjudicate guilt must be supported by a preponderance of the evidence. *Rickels*, 202 S.W.3d at 763-64. The evidence satisfies this standard when the greater weight of the credible evidence creates a reasonable belief that a defendant has violated a condition of his community supervision. *Id.* This Court may conclude that the trial court did not abuse its discretion if the record shows proof of any of the alleged violations of the conditions of community supervision. *See Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980). Evidence is examined in the light most favorable to the trial court's order. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981); *Jones v. State*, 787 S.W.2d 96, 97 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd).

Community supervision is a contractual relationship between the trial court and the offender. *Speth*, 6 S.W.3d at 534. Because the violation of a term of the contract could result in the loss of the probationer's freedom, "the conditions of supervision should be clear, explicit, and unambiguous so that the probationer knows what is expected and the authorities may know with certainty the parameters of that probationer's prescribed and permitted activities." *Simpson v. State*, 772 S.W.2d 276, 278 (Tex. App.—Amarillo 1989, no pet.); *Franklin v. State*, 632 S.W.2d 839, 841 (Tex. App.—Houston [14th Dist.] 1982, no pet.). For that reason, "[i]t is incumbent upon a trial judge to incorporate in [her] order granting probation the conditions upon which the accused is probated, so that the accused and authorities may know with certainty what those conditions are." *Stover v. State*, 365 S.W.2d 808, 809 (Tex. Crim. App. 1963). The trial court can make the defendant aware of the conditions of his community supervision by informing him of the conditions orally, in writing, or both. *Dansby v. State*, 448 S.W.3d 441, 447 (Tex. Crim. App. 2014); *see also Mid-Continent Cas. Co. v. Global Enercom Mgmt., Inc.*, 323 S.W.3d 151, 157 (Tex. 2010) (explaining a contract need not be signed to be enforceable under Texas

law so long as the record demonstrates the parties unconditionally assented to the terms of the contract).

This requirement that both parties must be aware of the terms of the contract at the time of its making is, of course, not unique to agreements regarding periods of deferred adjudication. For a contract to be formed, there must be mutual assent between the parties, which exists only when the parties agree to “the same thing in the same sense at the same time.” *CRSS Inc. v. Runion*, 992 S.W.2d 1, 4 (Tex. App.—Houston [1st Dist.] 1995, writ denied); *see also Utley v. Donaldson*, 94 U.S. 29, 47 (1876) (“There can be no contract without the mutual assent of the parties. This is vital to its existence.”); *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex.1992) (“The material terms of the contract must be agreed upon before a court can enforce the contract.”).

The conditions of supervision must be presented to the defendant at the time he enters into the agreement in part because CCA precedent makes clear that he is entitled to an opportunity to object to any conditions he finds to be objectionable. *Speth*, 6 S.W.3d at 534. If he does not object, the defendant affirmatively accepts the conditions as

terms of the contract and forfeits his right to subsequently object to the conditions. *Id.* at 534-35.

B. The trial court abused its discretion when it found that Spates violated the terms of his May 18, 2023, deferred adjudication agreement because no such agreement existed

In the case of deferred adjudication, the conditions of the defendant's community supervision are essential terms of the contract because they make clear what is expected of the defendant for him to receive the benefit of having his adjudication of guilt deferred. Spates did not sign his conditions of community supervision nor is there any indication on the record that he was verbally informed of his conditions of community supervision on May 18, 2023. Without evidence that Spates agreed to the terms, there was no contract between the court and Spates.

The hearing in the trial court on April 24, 2024, was on the State's motion that alleged that Spates had violated the terms of his May 18, 2023, agreement. For that reason, it was incumbent upon the State to prove that there was such an agreement. The State offered as evidence of this agreement a package that consisted of: 1) the trial court's May 18, 2023, order of deferred adjudication (R.R. at 86-88); 2) conditions of

community supervision signed by the trial court and the court liaison officer on May 18, 2023, but not signed by Spates (R.R. at 89-91); and 3) a document titled amended conditions of community supervision, which, contained none of the conditions and only signatures obtained from the trial court, the court liaison officer, and Spates on November 27, 2023 (R.R. at 92-93). Because nothing in the document or in the testimony presented by the State prior to offering its exhibit substantiated that any contract was formed on May 18, 2023, between Spates and the trial court, trial counsel properly objected that the document was not relevant (R.R. at 17).

Only after the trial court overruled trial counsel's objection and admitted the exhibit into evidence did the State present any testimony that could possibly be viewed as relevant to the issue of whether a contract was formed between Spates and the trial court on May 18, 2023. Specifically, after State's Exhibit 1 was admitted into evidence, court liaison officer Charles testified that the conditions of supervision had to have been explained to Spates on that day (i.e., May 18, 2023) and Spates had to have signed the document on that day because there was no other way that both he and the trial court would have been able

to sign the document unless these two things had occurred (R.R. at 20-22). Of course, if Spates did, in fact, sign the document after the conditions were explained to him but his signature simply was not captured because of a glitch in the software, as Charles testified, it was the first instance (at least the first of which Charles was aware) of this happening (R.R. at 25). This Court should find that this testimony was simply not credible.

The trial court abused its discretion in finding that State's Exhibit 1 contained the terms of an agreement between the court and Spates entered into on May 18, 2023, because nothing in the documents or in the credible testimony presented by the State is sufficient to demonstrate that any contract was formed between the trial court and Spates on May 18. For that reason, the trial court subsequently abused its discretion in deciding to adjudicate Spates' guilt on the basis that he had violated the terms of that purported agreement. *See Rickels*, 202 S.W.3d at 763-64.

PRAYER

WHEREFORE, Appellant Darius Spates respectfully requests that this Court find his conviction and sentence should be vacated.

Respectfully Submitted,

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Certificate of Service

I certify that on the 6th day of September 2024, a true and correct copy of the above legal document was delivered to the following:

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Certificate of Compliance

This Brief complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface using Microsoft Word for Mac, Version 16.88 in Century Schoolbook 14-point font for body text and 12-point font for footnote text. The Brief contains 2,538 words, excluding the parts exempted by Tex. R. App. P. 9.4(i)(1)

/s/ Jeffrey R. Newberry

Jeffrey R. Newberry

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Envelope ID: 91751693
Filing Code Description: Motion
Filing Description: Appellant's Final Motion for Extension of Time to File
Appellant's Brief
Status as of 9/9/2024 7:41 AM CST

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