

Affirmed and Opinion filed November 9, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00071-CR

MARK CHRISTOPHER DELGADO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 278th District Court
Walker County, Texas
Trial Court Cause No. 18,464-C**

OPINION

Appellant entered a plea of guilty to the felony offense of possession of more than five and less than fifty pounds of marijuana. Pursuant to a plea bargain agreement, the court suspended imposition of sentence, placed appellant on probation for ten years, and assessed a fine of one thousand dollars. Subsequently, the court revoked appellant's probation and sentenced him to confinement for ten years in the Institutional Division of the Texas Department of Criminal Justice.

Appellant's appointed counsel filed a motion to withdraw from representation of appellant along with a supporting brief in which he concludes that the appeal is wholly frivolous and without merit. The

brief meets the requirements of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), by presenting a professional evaluation of the record demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant. Appellant was advised of the right to examine the appellate record and to file a *pro se* response. Appellant has filed a *pro se* response to the *Anders* brief. Having reviewed both briefs, we find no arguable grounds of error are presented.

Appellant's complains in his *pro se* response that the evidence is insufficient to support the probation revocation order with respect to several of the allegations in the State's amended motion to revoke probation. In a probation revocation hearing, the trial judge is the sole trier of fact and determines the credibility of the witnesses and the weight to be given to their testimony. *See Battle v. State*, 571 S.W.2d 20, 22 (Tex. Crim. App. 1978). In a hearing on a motion to revoke probation, the State must prove every element of the ground asserted for revocation by a preponderance of the evidence. *See McCullough v. State*, 710 S.W.2d 142, 145 (Tex. App.–Houston [14th Dist.] 1986, pet. ref'd). The State satisfies its burden of proof when the greater weight of credible evidence before the court creates a reasonable belief that it is more probable than not that a condition of probation has been violated as alleged in the motion to revoke. *See Joseph v. State*, 3 S.W.3d 627 (Tex. App.–Houston [14th Dist.] 1999, no pet.). Appellate courts review an order revoking probation under the abuse of discretion standard. *See Cardona v. State*, 665 S.W.2d 492, 493-94 (Tex. Crim. App. 1984). In making this determination, we 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. 1981); *Allen v. State*, 681 S.W.2d 183, 184 (Tex. App.–Houston [14th Dist.] 1984, no pet.).

In view of appellant's plea of "true" to four of the seven allegations in the motion to revoke, the sufficiency of the evidence to support the revocation is not before this court in the present case. *See Rincon v. State*, 615 S.W.2d 746, 747 (Tex. Crim. App. 1981). Each one of appellant's four pleas of true, standing alone, is sufficient to support the revocation of probation. *See Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979). Proof of any one of the alleged violations is sufficient to

support a revocation of community supervision. *See Moore v. State*, 11 S.W.3d 495, 498 (Tex. App.–Houston [14th Dist.] 2000, no pet.). Once a plea of true has been entered, a defendant may not challenge the sufficiency of the evidence to support the subsequent revocation. *See id.* at 501.

When several violations are found by the court, the order revoking probation shall be affirmed if the proof of any allegation is sufficient. *See Rodriguez v. State*, 2 S.W.3d 744, 746 (Tex. App.–Houston [14th Dist.] 1999, no pet.). Having found the evidence sufficient to prove four of the allegations in the motion to revoke, it is not necessary to address appellant's contentions that the evidence was insufficient to support the remaining findings by the trial court. *See id.* No abuse of discretion is shown in the trial court's action in revoking appellant's probation. *See Marcum v. State*, 983 S.W.2d 762,766-767 (Tex. App.–Houston [14th Dist.] 1998, pet, ref'd).

Appellant next contends that his retained attorney communicated a five year plea bargain offer to appellant prior to the revocation proceeding, which appellant desired to accept. Appellant claims he was never provided the opportunity to avail himself of the plea bargain offer and instead, found himself in a revocation hearing which resulted in a ten year sentence. There is no evidence in the record to support appellant's claim. We refuse to speculate as to facts not included in the record. Appellant's complaint presents no arguable ground for review.

Accordingly, the judgment of the trial court is affirmed and the motion to withdraw is granted.

PER CURIAM

Judgment rendered and Opinion filed November 9, 2000.

Panel consists of Justices Anderson, Fowler and Edelman.

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