



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-19-00111-CR

CARLY MICHELLE VEGA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from the 100th District Court
Collingsworth County, Texas
Trial Court No. 3008, Honorable Stuart Messer, Presiding**

May 21, 2020

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellant, Carly Michelle Vega, appeals from the trial court's order revoking her deferred adjudication community supervision, adjudicating her guilty of the state jail felony of unauthorized use of a motor vehicle,¹ and sentencing her to twenty-two months' incarceration and a \$500 fine. Appellant challenges her sentence as grossly disproportionate to her crime. We affirm the judgment of the trial court.

¹ See TEX. PENAL CODE ANN. § 31.07 (West 2016).

Factual and Procedural Background

On October 4, 2017, appellant was placed on deferred adjudication community supervision for a period of two years following her guilty plea to the state jail felony offense of unauthorized use of a motor vehicle. Appellant's community supervision was subject to certain terms and conditions, including that she would abstain from the use of drugs and alcohol, report to her community supervision officer monthly, pay a monthly community supervision fee of \$60, pay at least \$60 per month toward court-ordered fines, and file a financial statement of her inability to pay fees for any month that she does not make required payments. On January 28, 2019, the State filed a motion to adjudicate appellant's guilt, which alleged that appellant violated several terms and conditions of her community supervision.

At the hearing on the State's motion, appellant pled true to most of the State's allegations. Appellant's community supervision officer, Carol Holcomb, testified. Appellant also testified. Holcomb testified that appellant admitted to using methamphetamine on approximately five occasions while she was on community supervision. Holcomb also testified that, during the time appellant was on community supervision, she repeatedly failed to report, pay fines and fees, perform community service, or remain employed. Holcomb stated of appellant's performance on community supervision that "she just showed no effort."

After hearing the evidence, the trial court expressly found Holcomb's testimony to be credible while questioning the credibility of appellant's testimony. Based on appellant's pleas of true and the evidence presented, the trial court found the evidence sufficient to

support adjudication of appellant's guilt and sentenced appellant to incarceration for a period of twenty-two months.

Appellant presents two issues by her appeal. Her first issue posits whether the trial court abused its discretion in finding that appellant violated the terms and conditions of her community supervision. By her second issue, appellant contends that her twenty-two-month sentence is grossly disproportionate to the gravity of the offense.

Law and Analysis

Adjudication

While appellant presents an issue regarding the trial court's finding that she violated the terms and conditions of her community supervision, her analysis expressly concludes that the trial court did not abuse its discretion. Appellant pled true to consuming methamphetamine, failing to report for four months, failing to pay monthly fees and fines for over a year, and failing to file a financial statement of inability to pay for five months. The trial court needed only find that appellant violated one of the terms and conditions of her community supervision to support revocation. *McDonald v. State*, 608 S.W.2d 192, 200 (Tex. Crim. App. 1980) (op. on reh'g). And, appellant's plea of true to any of the alleged violations is sufficient, by itself, to support the revocation. *Cole v. State*, 578 S.W.2d 127, 128 (Tex. Crim. App. [Panel Op.] 1979) (" . . . appellant's plea of true, standing alone, is sufficient to support the revocation of probation."). Consequently, we overrule appellant's first issue.

Grossly Disproportionate Sentence

By her second issue, appellant contends that the trial court abused its discretion by assessing a sentence that is grossly disproportionate to appellant's offense.

We begin our analysis of a challenge to the sentence imposed by comparing the gravity of the offense with the severity of the sentence when all the applicable circumstances are considered. *Noyes v. State*, No. 07-16-00229-CR, 2018 Tex. App. LEXIS 3572, at *6 (Tex. App.—Amarillo May 21, 2018, no pet.) (mem. op., not designated for publication) (citing *Graham v. Florida*, 560 U.S. 48, 60, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)). In making this assessment, we consider the harm caused or threatened to the victim, the offender's culpability, and the offender's prior adjudicated and unadjudicated offenses. *State v. Simpson*, 488 S.W.3d 318, 323 (Tex. Crim. App. 2016) (citing *Graham*, 560 U.S. at 60). Only if we can infer that the sentence is grossly disproportionate to the offense will we compare the sentence appellant received with the sentence others received for similar crimes in this jurisdiction or in other jurisdictions. *Noyes*, 2018 Tex. App. LEXIS 3572, at *6; *Winchester v. State*, 246 S.W.3d 386, 389 (Tex. App.—Amarillo 2008, pet. ref'd).

Generally, a sentence within the statutory range of punishment for an offense is not excessive, cruel, or unusual punishment. *Winchester*, 246 S.W.3d at 388. “[T]he sentencer’s discretion to impose any punishment within the prescribed range [is] essentially ‘unfettered.’” *Ex parte Chavez*, 213 S.W.3d 320, 323 (Tex. Crim. App. 2006). Except for grossly disproportionate sentences, which are “exceedingly rare,” “. . . a punishment that falls within the legislatively prescribed range, and that is based upon the sentencer’s informed normative judgment, is unassailable on appeal.” *Id.* at 323-24.

The offense of unauthorized use of a motor vehicle is a state jail felony. TEX. PENAL CODE ANN. § 31.07(b). As such, the applicable range of punishment is a term of incarceration between 180 days and two years and a fine not to exceed \$10,000. TEX. PENAL CODE ANN. § 12.35 (West 2019). Appellant's twenty-two-month sentence and \$500 fine are within the statutory range of punishment. Appellant pled guilty to the offense of unauthorized use of a motor vehicle. Appellant also admitted that, during the less than sixteen months that she was on community supervision, she used methamphetamine, failed to report four times, failed to pay court-ordered fines and fees for fourteen months, and failed to file a financial statement for five months. Appellant also signed two separate admission of use forms that stated that she used methamphetamine once or twice per month in the two months preceding the instance when she admitted her use at trial. Appellant's community supervision officer testified that appellant made no effort to comply with the terms and conditions of her community supervision. During the entirety of appellant's community supervision, she was not employed yet still failed to complete any of the community service to which she had been sentenced. The trial court can consider appellant's failure to comply with the terms and conditions of her community supervision in assessing her sentence. See *Chafin v. State*, No. 02-06-00167-CR, 2007 Tex. App. LEXIS 8297, at *2 (Tex. App.—Fort Worth Oct. 18, 2007, no pet.) (mem. op., not designated for publication) (citing TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (West Supp. 2019)). When all the circumstances are considered, we conclude that the twenty-two-month sentence is not grossly disproportionate to the severity of the offense.

We are to consider sentences others received for similar crimes in this and other jurisdictions only after we reach the inference that the sentence is grossly disproportionate to the offense. *Noyes*, 2018 Tex. App. LEXIS 3572, at *6; *Winchester*,

246 S.W.3d at 389. We note that appellant does not identify any other sentences for unauthorized use of a motor vehicle. Thus, even if we were to reach this issue, appellant has not met her burden of proof.

Conclusion

Having overruled appellant's issues, we affirm the judgment of the trial court.

Judy C. Parker
Justice

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