

AFFIRMED as MODIFIED and Opinion Filed June 4, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-01375-CR

No. 05-18-01376-CR

**CLEVELAND ELIJAH POWELL, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1224262-U, F-1654139-U**

MEMORANDUM OPINION

**Before Justices Bridges, Pedersen, III, and Evans
Opinion by Justice Bridges**

Appellant Cleveland Elijah Powell was indicted for aggravated assault with a deadly weapon.¹ He pleaded guilty pursuant to a plea agreement with the State, adjudication of guilt was deferred, and he was placed on community supervision for ten years. The State later moved to adjudicate guilt based on (a) an arrest for unlawful possession of a firearm by a felon; (b) positive urinalysis tests for marijuana; (j) failure to pay community supervision fees; (l) failure to complete

¹ Trial court cause number F-1224262-U and appellate cause number 05-18-01375-CR

community supervision; (n) failure to pay urinalysis fees; and (q) failure to participate in certain programs. The trial court held a hearing and concluded the State presented sufficient evidence that appellant violated the conditions of his probation. The trial court granted the State's motion to adjudicate guilt and sentenced appellant to six years' confinement.

On appeal, appellant argues the trial court abused its discretion by proceeding to adjudicate guilt when the State failed to establish by a preponderance of the evidence that he unlawfully possessed a firearm. He further argues the judgment should be modified to reflect the correct date of the offense. In a cross-issue, the State requests the judgment be further modified to correctly reflect appellant's plea to the motion to adjudicate guilt. As modified, the judgments of the trial court are affirmed.²

Discussion

In his first issue, appellant argues the State failed to establish by a preponderance of the evidence his unlawful possession of a firearm. The State responds the trial court properly granted its motion to adjudicate guilt based on a preponderance of the evidence.

² The State also filed a motion to adjudicate guilt on appellant's April 24, 2016 indictment for intentionally and knowingly possessing an amount of less than one gram of cocaine (trial court cause number F-1654139-U and appellate cause number 05-18-01376-CR). Appellant pleaded true, the trial court granted the State's motion, and the court sentenced appellant to six months' imprisonment. Appellant has not raised any issue on appeal relating to this judgment. Accordingly, we affirm the trial court's judgment in cause number 05-18-01376-CR.

We review a trial court's decision to revoke community supervision and adjudicate guilt for an abuse of discretion, taking into account the sufficiency of the evidence supporting the basis for revocation. *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013); *see also Brown v. State*, No. 05-19-00128-CR, 2020 WL 64672, at *2 (Tex. App.—Dallas Jan. 7, 2020, no pet.) (mem. op., not designated for publication). The State must prove a ground for revocation of community supervision by a preponderance of the evidence. *Hacker*, 389 S.W.3d. at 864–65. Proof by a preponderance of the evidence of any one alleged violation is sufficient to revoke community supervision and adjudicate guilt. *Smith v. State*, 286 S.W.3d 333, 342 (Tex. Crim. App. 2009). A plea of true to an allegation that a defendant has violated a condition of his community supervision is sufficient to support the revocation of community supervision and adjudicate guilt. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. [Panel Op.] 1979); *Brown*, 2020 WL 64672, at *2.

Appellant provided a lengthy analysis in his brief of the requirements for affirmatively linking a defendant to contraband not found in a defendant's exclusive possession. He contends the State failed to prove the gun officers found in the backseat of a car he was driving belonged to him. Officers also found a loaded gun in the trunk of the car. However, appellant fails to acknowledge that he judicially confessed and pleaded true to the remaining allegations in the State's motion to

adjudicate guilt, which included failing to complete community service and a mandatory class, failing to pay certain fees, and failing drug tests.

During the revocation hearing, the court, without objection, took judicial notice of appellant's signed, voluntary plea of true to these allegations. Appellant's probation officer testified and confirmed probation violations. Appellant also testified and likewise confirmed he tested positive for marijuana, failed to pay certain fines, and failed to complete a required program.

Appellant's plea of true to a single allegation that he violated a condition of his community supervision was sufficient to support revocation of his community supervision and to adjudicate guilt. *Moses*, 590 S.W.2d at 470. Accordingly, appellant's plea of true to violating conditions (b), (j), (l), (n), and (q) in cause number F-1224263-U provided sufficient evidence to support the trial court's decision. Appellant's first issue is overruled.

In his second issue, appellant argues the judgment should be modified to reflect the correct date of the offense. The judgment states the date of the offense as "8/28/2012." The State filed an amended indictment to correct the date of the offense to "8/19/2012." We may reform a judgment to "speak the truth" when we have the necessary information in the record to do so. *See* TEX. R. APP. P. 43.2(b); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd). The State agrees the judgment should be so modified. Therefore, we sustain appellant's

second issue and modify the judgment to correct the date of the offense from 8/28/2012 to 8/19/2012.

In a cross-issue, the State requests further modification of the judgment to accurately reflect appellant's plea to the allegations in the motion to adjudicate. The judgment indicates appellant pleaded not true. However, during the hearing on the State's motion to adjudicate guilt, appellant pleaded true to violating (b), (j), (l), (n), and (q) and not true to allegation (a). We modify the judgment to reflect that appellant pleaded true to (b), (j), (l), (n), and (q) and not true to allegation (a).

As modified, the judgment of the trial court is affirmed.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CLEVELAND ELIJAH POWELL,
Appellant

No. 05-18-01375-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-1224262-U.
Opinion delivered by Justice Bridges.
Justices Pedersen, III and Evans
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

Date of the offense: **DELETE** "8/28/2012" and **REPLACE** with
"8/19/2012"

Plea to motion to adjudicate: **DELETE** "Not true" and **REPLACE** with
"True to (b), (j), (l), (n), and (q) and Not True to allegation (a)."

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered June 4, 2020



**Court of Appeals
Fifth District of Texas at Dallas**

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