

Affirmed as Modified; Opinion Filed June 18, 2020



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

No. 05-19-00451-CR

**SANTOS CANALES, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F97-52180-U**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichel
Opinion by Justice Myers

Appellant Santos Canales was convicted of murder. He judicially confessed to the offense and entered into a plea agreement with the State to defer a finding of guilt. The trial court placed appellant on community supervision for ten years. The State subsequently filed a motion to adjudicate and, after hearing this motion, the trial court found appellant violated the terms of his community supervision. The court sentenced appellant to ten years in prison. In one issue, appellant contends the judgment should be modified to reflect the conditions the trial court found true. The State agrees. Therefore, as modified, we affirm the trial court's judgment.

DISCUSSION

In his only issue, appellant argues the judgment should be reformed to reflect that he violated allegations (D) and (J) of the motion to adjudicate guilt. The State agrees with this requested modification.

Page two of the judgment adjudicating guilt specifies that appellant “violated the terms and conditions of community supervision as set out in the State’s ORIGINAL Motion to Adjudicate Guilt as follows: See attached Motion to Adjudicate Guilt.” The State’s January 21, 1999¹ “Motion to Revoke Probation or Proceed with an Adjudication of Guilt” is attached to the judgment, and this motion details that appellant violated the following conditions:

(1) Santos Canales did violate condition (d) in that he did not report to the probation officer as directed for the month(s) of August, September, October, November and December 1998.

(2) Santos Canales did violate condition (j) in that he failed to pay Court assessed fees as directed and is \$500.00 delinquent.

(3) Santos Canales did violate condition (n) in that he failed to complete community service work at the rate of not less than 20 hours per month as directed.

At the July 7, 2016 adjudication hearing, appellant entered a plea of not true to the alleged violations and, after hearing testimony, the trial court granted the motion to adjudicate and found appellant “violated conditions D, I, J, and M contained in the State’s motion to adjudicate.” The trial court’s docket sheet also

¹ The Court of Criminal Appeals concluded appellant was entitled to an out-of-time appeal pursuant to article 11.07 of the Texas Code of Criminal Procedure. See *Ex parte Canales*, No. WR-89,501-04, 2019 WL 1271082, at *1 (Tex. Crim. App. Mar. 20, 2019) (not designated for publication).

states that the court found that appellant violated conditions D, I, J, and M. The trial court did not orally pronounce a finding of true regarding condition “N.” Moreover, the original conditions of community supervision do not include a condition “I,” nor is one alleged in the motion to adjudicate. Finally, although there was a condition “M,” it is not alleged as a ground in the motion to adjudicate.

We have the power to modify an incorrect judgment to make the record speak the truth when we have the necessary information to do so. TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d); *see also Burton v. State*, No. 05-18-00608-CR, 2019 WL 3543580, at *3 (Tex. App.—Dallas Aug. 5, 2019, no pet.) (mem. op., not designated for publication) (“We have the power to modify a judgment adjudicating guilt so that it accurately reflects the length of the defendant’s community-supervision term and the live pleading on which the adjudication was based.”). Thus, we modify the trial court’s judgment adjudicating guilt to state: “Defendant violated the terms and conditions of community service as set out in the State’s ORIGINAL Motion to Adjudicate Guilt as follows: See Conditions D and J of attached motion to adjudicate guilt.”

As modified, we affirm the trial court's judgment.

/Lana Myers/
LANA MYERS
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

SANTOS CANALES, Appellant

No. 05-19-00451-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court, Dallas County, Texas Trial Court Cause No. F97-52180-U. Opinion delivered by Justice Myers. Justices Partida-Kipness and Reichek participating.

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

The portion of the judgment on page two that states, "Defendant violated the terms and conditions of community supervision as set out in the State's ORIGINAL Motion to Adjudicate Guilt as follows: See attached Motion to Adjudicate Guilt," is changed to read: "Defendant violated the terms and conditions of community service as set out in the State's ORIGINAL Motion to Adjudicate Guilt as follows: See Conditions D and J of attached Motion to Adjudicate Guilt."

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

Judgment entered this 18th day of June, 2020.