
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Violation not alleged in first motion to modify may be used in subsequent motion to modify. [In the Matter of J.L.E.](05-3-22)

On July 14, 2005, the Corpus Christi Court of Appeals held that a violation of probation occurring prior to a previous motion to modify hearing (placing child on probation) may be used for new (second) motion to modify (committing child to TYC).

05-3-22. In the Matter of J.L.E., MEMORANDUM, No. 13-04-00058-CV, 2005 Tex.App.Lexis 5452 (Tex.App.— Corpus Christi 7/14/05).

Facts: On June 12, 2003, J.L.E. was adjudicated to have engaged in delinquent conduct and placed on probation. On September 11, 2003, the State filed a motion to modify the disposition. The State alleged that on July 31, 2003, J.L.E. violated the conditions of his probation by (1) violating a lawful court order and his curfew and (2) intentionally fleeing from a peace officer who was attempting to arrest him. After a hearing on the motion, the trial court found that J.L.E. had violated the conditions of his probation and placed him on Intensive Supervision Probation.

On November 13, 2003, the State again moved to modify the disposition. The State alleged that on September 26, 2003, J.L.E. violated the conditions of his probation by (1) violating a lawful court order regarding "inhalant paraphernalia use," (2) violating his curfew, and (3) associating "with other juveniles on parole using drugs." After a hearing on the motion, the trial court found that J.L.E. had violated the conditions of his probation, remanded him to the custody of the juvenile probation department, and ordered him admitted to the TAPS facility in Carrizo Springs, Texas.

Held: Affirmed

Memorandum Opinion: In his first issue, J.L.E. contends the evidence is legally and factually insufficient to prove any violation of the conditions of his probation. Specifically, J.L.E. argues that evidence of a violation of a condition of probation that occurred before he was placed on Intensive Supervision Probation is insufficient to revoke his probation.

The relevant inquiry under *section 54.05(f) of the family code* is whether the child violated a reasonable and lawful order of the court. *See TEX. FAM. CODE ANN. § 54.05(f)* (Vernon Supp. 2004-05).

Therefore, the date of the offense giving rise to the adjudication which the State is seeking to modify is irrelevant to the trial court's determination on a motion to modify a disposition.

Conclusion: After reviewing the entire record, we conclude that more than a scintilla of evidence exists to support the trial court's finding (1) that J.L.E had violated the conditions of his probation and (2) that

he be removed from his home. We further conclude that the trial court's findings are not so against the great weight and preponderance of the evidence that they are manifestly unjust. Accordingly, we hold the trial court did not abuse its discretion in (1) finding a violation of the conditions of probation and (2) removing J.L.E. from his home and placing him in the TAPS facility. Appellant's first and second issues are overruled.

Editor's Note: While the case did not state it specifically, it is assumed that the date of the hearing placing the child on Intensive Supervision probation was held after September 26, 2003.

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