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 Vol. 22, No. 12 - March 24, 2014

Case Name: Lawrence Donovan v. The State of Texas

- OFFENSE: Probation Revocation / Sexual Offenses
- COUNTY: Tarrant
- C/A CASE No. 02-11-0033-CR
- DATE OF OPINION: March 13, 2014
- DISPOSITION: Conviction Affirmed OPINION: [Gabriel, J.](#)
- TRIAL COURT: 371st D/C; Hon. Mollee Westfall
- LAWYERS: [David Richards](#) (Defense); [Edward Wilkinson](#) (State)

Ed Note: The opinion of July 26, 2013 (see , [Vol. 20, No. 32](#); 08/13/2012) is withdrawn. This is the opinion on en banc reconsideration.

(Background Facts) In 2006, Appellant pled no contest to injury to a child in exchange for five years' deferred-adjudication probation. The trial court specifically found Appellant not guilty of aggravated sexual assault and indecency with a child and granted his motion to expunge the records relating to those counts. The trial court judge was replaced after the next election. In March 2008, his successor extended Appellant's probation and modified its terms to require that Appellant submit to an evaluation for sex-offender treatment and successfully complete the prescribed treatment. There is no record that Appellant objected to these terms at the time they were imposed. In August 2008, Appellant first met with Michael Strain, an approved sex-offender treatment provider, and began group-counseling sessions that September. On February 3, 2010, Appellant told Strain that he would not discuss the expunged offenses during treatment sessions. Strain told Appellant he was uncertain whether any useful treatment work could be done, and pending some clarification of the matter, he discontinued Appellant's treatment. Appellant's probation supervisor, Mayra Pinedo, testified that she stressed to Appellant that while the matter was pending review he still would be held accountable for meeting his treatment goals by the second-year deadline. She further testified that she offered for him to choose another approved provider so that he could complete the goals. Appellant refused Pinedo's offer to attend treatment with another provider and did not attend any further treatment sessions before the second-year treatment deadline.

 **414 Probation Revocation / Terms & Conditions / Constitutional Issues (Improper Imposition of Conditions - Sex Offender Conditions - Waiver):** In 2006, Appellant pleaded no contest to injury to a child in exchange for five years' deferred-adjudication community supervision. Over the next several years, the terms and conditions of his probation were modified several times, with the condition requiring that Appellant submit to an evaluation for sex-offender treatment and

successfully complete the prescribed treatment being added in March 2008. “There is no record that Appellant objected to these terms at the time they were imposed.” The State filed its petition to adjudicate on October 20, 2010, alleging that Appellant had violated his probation by not attending sex-offender treatment and not completing two-thirds of his treatment by the two-year deadline. After a four-day hearing, the trial court granted the State’s petition, adjudicated Appellant’s guilt, revoked his probation, and sentenced him to four years’ confinement. Appellant contends that the trial court abused its discretion by revoking his probation upon finding that he failed to attend and complete sex-offender treatment as ordered, based on [Ex parte Evans](#), 338 S.W.3d 545 (Tex.Cr.App. 2011)(see [68](#), [Vol. 19, No. 18](#); 05/09/2011). He claimed that the Court of Criminal Appeals “severely curtailed the requirement of Sex Offender Treatment for parolees convicted of non-sex offenses.”

Holding: Because the record shows that Appellant did not object to the complained-of conditions by pursuing his motion to amend as a prerequisite to filing an application for writ of habeas corpus or by presenting written objections to the trial court at any point between the time the conditions were imposed and the adjudication hearing -- despite his being well represented by counsel and having multiple opportunities to do so -- we hold that Appellant has forfeited his claims for review. *** Accordingly, we overrule all of Appellant’s points and affirm the trial court’s judgment.

Concurring / Dissenting Opinions: [Justice Walker](#) filed a concurring and dissenting opinion. She agreed with the majority opinion’s holding that Appellant forfeited any challenge to the trial court’s imposition of the sex-offender-treatment condition to his community supervision by not objecting when the trial court imposed this supplemental condition. She noted, however, that “Appellant could not have objected that treatment would require him to discuss and admit to the acquitted and expunged sex offenses -- he did not know at that time that he would be asked to do so in order to complete the treatment.” She would hold that Appellant preserved for this court’s review his complaint that the trial court abused its discretion by revoking his community supervision for failure to attend and complete a sex-offender treatment program that required him to discuss and admit to sex offenses of which he had been found not guilty and that had been expunged, and I would reach the merits of this argument. [Justice Dauphinot](#) filed a separate dissenting opinion. She cannot agree with the majority’s conclusion that “despite his being well represented by counsel and having multiple opportunities to do so[,] . . . Appellant has forfeited his claims for review.” She points out that the majority “does not explain how Appellant could object when his lawyer did not.” She would hold that the trial court abused its discretion by revoking Appellant’s community supervision and proceeding to adjudication because the trial court found that Appellant, who had not been convicted of a sex offense, had failed to comply with the sex offender caseload conditions promulgated by a person who was neither a judge nor a community supervision officer and based on records which had been ordered expunged and Appellant’s refusal to reveal facts that could lead to his criminal prosecution.