

NO. 99-00000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 25TH JUDICIAL DISTRICT
BOBBY WAYNE SMITH) GUADALUPE COUNTY, TEXAS

**DEFENDANT’S MOTION FOR MODIFICATION OF
CONDITIONS OF COMMUNITY SUPERVISION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes BOBBY WAYNE SMITH, defendant in the above styled and numbered cause, and files this Defendant’s Motion For Modification Of Conditions Of Community Supervision pursuant to article 42.12 § 10 of the Texas Code of Criminal Procedure, and for good cause:

I.

On May 12, 1999, Mr. Smith plead nolo contendere to manslaughter- two counts and, on July 21, 1999 he was sentenced to eight years deferred adjudication, a \$2,500.00 fine and 180 days jail time as condition of community supervision.

II.

Mr. Smith has now served more than 60 days of the 180 days imposed as a condition of community supervision. By this motion, he respectfully requests that this Court modify his conditions of community supervision by reducing the period of confinement to 90 days, with the remaining 90 days to be served under house arrest with an electronic monitor. This request is based on the following reasons:

1. Mr. Smith has never before been convicted of a crime in this or any other state.

2. The crime for which Mr. Smith was convicted--manslaughter--is undeniably a serious one having tragic consequences in his case. Nonetheless, the crime was not intentionally or knowingly committed, but rather it was a reckless one. This less serious culpable mental state, from a defendant who has never before been convicted of a crime, militates in favor of a more lenient sentence.
3. Although neither Mr. Smith's counsel nor the state attempted to bind this Court's imposition of confinement as a condition of community supervision, the State of Texas did make the nonbinding recommendation of 90 days. Although this recommendation was nonbinding, the fact that it was made by an experienced prosecutor is a persuasive indicator of its appropriateness.
4. Mr. Smith was gainfully employed by Mr. Ernest Neuman, of Guadalupe County, and he believes that he can gain reemployment upon his release from jail.
5. Mr. Smith has not had an alcoholic beverage in more than 60 days. Should this Court believe that he had a drinking problem prior to his incarceration, in light of this lengthy period of detoxification, he is now an excellent candidate for alcohol treatment and/or counseling outside of jail, as a condition of community supervision.
6. As detailed in his presentence report, Mr. Smith has a seriously injured foot, which requires special medical treatment. Although he has received some treatment in the jail, such treatment imposes extra burdens on jail personnel, and is less than ideal from Mr. Bibb's standpoint.
7. Mr. Smith's parents live on some 27 acres of land in Guadalupe County that he owns. He has several dogs and head of cattle, and his father, due to his emphysema and poor health, finds it difficult to maintain the property and animals.
8. Since his incarceration began, Mr. Smith has heard from various sources that relatives of the deceased in his case want him to be killed while in jail. When apprised of these threats, officials with the Guadalupe County jail placed Mr. Smith in protective custody, where he remains today. Even though he is in protective custody, Mr. Smith does not feel entirely protected from the threats he has heard.

WHEREFORE PREMISES CONSIDERED, defendant moves that this Court reconsider its imposition of 180 days in the Guadalupe County Jail as a condition of

community supervision and impose instead 90 days confinement, to be followed by 90 days electronic monitoring.

Respectfully submitted:

MARK STEVENS
State Bar No. 19184200
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MARK STEVENS

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Motion For Modification Of Conditions Of Community Supervision has been mailed to the Guadalupe County District Attorney's Office; 113 South River, Suite 205; Seguin, Texas 78155, on this the 20th day of September, 1999.

MARK STEVENS

ORDER

On this the ____ day of _____, 1999, came to be considered Defendant's Motion For Modification Of Conditions Of Community Supervision, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING

STATE OF TEXAS)

AFFIDAVIT

COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, on this day personally appeared BOBBY W. SMITH, who after being duly sworn stated:

I am the defendant in the above entitled and numbered cause. I have read the foregoing Defendant's Motion For Modification Of Conditions Of Community Supervision and swear that all the allegations of fact contained therein are true and correct.

BOBBY W. SMITH

SUBSCRIBED AND SWORN TO BEFORE ME on the ____ day of September, 1999.

Notary Public in and for
Bexar County, Texas

My commission expires: _____

CERTIFICATE OF PRESENTATION

I certify that I am counsel for defendant in this case and that I presented this motion to the trial court within 10 days after filing it.

MARK STEVENS

ORDER SETTING HEARING DATE

IT IS ORDERED that this motion having been presented to the trial court within ten days of its filing, the hearing on Defendant's Motion For Modification Of Conditions Of Community Supervision is hereby set for_____, _____.m., on the _____ day of _____, 1999, in the courtroom of the 25th Judicial District Court of Guadalupe County, Texas.

JUDGE PRESIDING

NO. 99-0085-CR

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	25TH JUDICIAL DISTRICT
BOBBY W. SMITH)	GUADALUPE COUNTY, TEXAS

FIAT

On this the _____ day of _____, 1999, came to be considered Defendant's Motion For Modification Of Conditions Of Community Supervision, and said matter is hereby set for a hearing on the _____ day of _____, 1999, at _____ o'clock, _____.m., in the 25 Judicial District Court of Guadalupe County, Texas.

SIGNED on the date set forth above.

JUDGE PRESIDING