

DIVISION I

CACR07-498

December 5, 2007

ROBERT CARPENTER
APPELLANT
V.
STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[CR-02-572-1]
HONORABLE JOHN HOMER
WRIGHT, CIRCUIT JUDGE
AFFIRMED

This is an appeal from the revocation of probation. Appellant, Robert Carpenter, argues that the trial court erred in taking judicial notice of the court's file and that there was insufficient evidence to revoke his probation. We affirm.

On February 24, 2003, Carpenter entered a negotiated plea of guilty to the offenses of commercial burglary and attempted commercial burglary. He was sentenced to four years' probation; ordered to pay restitution of \$582.02; and ordered to pay court costs. A judgment and disposition order memorializing this plea was filed on March 6, 2003. One of the conditions of Carpenter's probation was that he pay a supervision fee of \$25 per month to the Department of Community Punishment. On March 1, 2006, a petition was filed to waive Carpenter's past and present supervision fees due to his limited income and the fact that he still owed restitution to the victim, and an order waiving this condition of

probation was filed on March 2, 2006. On December 27, 2006, a petition to show cause was filed against Carpenter, alleging that he had violated three conditions of his probation — that he had committed a criminal offense punishable by imprisonment, second-degree forgery; that he was delinquent \$825 in supervision fees; and that he had an outstanding restitution balance of \$498.02 and had not made a payment since July 18, 2003.¹

At the beginning of the revocation hearing, held on February 12, 2007, the trial judge stated that as a matter of course in revocations, he took judicial notice of the entire file. Next, the State withdrew the allegation of probation violation with respect to condition number thirteen, noting that all of the supervision fees had previously been waived. The trial court allowed the State to withdraw that allegation.

At the hearing, Kristi Constant, Carpenter's probation officer, testified that Carpenter's outstanding restitution balance was \$498.02; that Carpenter had not made a restitution payment since July 18, 2003; that Carpenter had requested to waive his supervision fees so that he could concentrate on his restitution payments; and that Carpenter had paid his court costs and his indigent-defense-fund payment. She also alleged that Carpenter had violated the law concerning a forgery.

David Rhoda, Carpenter's former landlord, testified that in October 2006, Carpenter had given him a check for rent made out to David Rhoda. He said that

¹The probation violation report erroneously stated that the restitution violation was the fifteenth condition of Carpenter's probation when in fact it was the fourteenth condition. This error was perpetuated by the trial judge, as he found that Carpenter had violated conditions 1, 13, and 15 of his probation instead of conditions 1, 13, and 14.

Carpenter told him that he had performed some work for some people and that they had written the check for his rent. Rhoda noted "Rob's rent" on the check and deposited it. Rhoda said that he did not know who filled out the check, just that it was made out to him and that Carpenter told him that it was for his rent.

Kim Hutzel, on whose account the check in question was written, testified that her checkbook was stolen on October 10, 2006, and although she immediately called her bank, the check was cashed prior to the stop-payment notice on that account. Kim Hutzel testified that she neither wrote that check nor authorized anyone else to do so. Her husband, Michael Hutzel, also testified that he did not sign the check or authorize anyone to sign it on his behalf.

Detective Frank Abbott of the Hot Springs Police Department testified that when he spoke to Carpenter in October 2006 regarding some burglaries involving a person named Aaron Armstrong, Carpenter mentioned something about a forgery. Abbott said that Carpenter voluntarily stated that Armstrong had given him a check, and that Carpenter had given it to his landlord for rent.

Sergeant Greg Stringer of the Hot Springs Police Department testified that he investigated the potential forgery on Kim Hutzel's account and that Carpenter was one of the suspects. Stringer said that when he arrested Carpenter for forgery, he read Carpenter his rights, Carpenter signed and initialed the rights form, and Carpenter gave a voluntary written statement. The statement indicated that Armstrong had given Carpenter the check because Armstrong knew that Carpenter was behind on his rent; that Armstrong told

Carpenter that he got the check in return for doing some work; and that Armstrong had not said anything about the check being stolen. Stringer also took David Rhoda's statement, in which Rhoda said that Carpenter had told him that some friends were trying to help Carpenter out by giving him a check already made out to Rhoda, which Carpenter then gave to Rhoda.

After the State rested, the defense moved for a directed verdict, arguing that the conditions of probation were not introduced, that there had been no testimony that Carpenter had ever signed or been advised of the conditions of probation, and that it was crucial for the trial court to have introduced as an exhibit the conditions of probation. The defense also argued that there was insufficient evidence to show that Carpenter committed forgery because all he did was give the check to his landlord. The last part of the directed-verdict motion was that the State had failed to show that Carpenter had the means to make restitution and did not do it. All of these arguments were denied by the trial court.

Carpenter testified in his own defense, stating that during his time on probation, he did not have the ability to pay restitution. He said that in 2005, he worked at McAllister's for about a week and a half, at Chef Paul's for two or three months, and at Modern Window and Door. He said that in 2006, he worked at Brick House Grill for three or four months, at Magic Springs for two months, and at Aces Construction for two months.

With respect to the stolen check, Carpenter said that Armstrong was staying with him until he could "get on his feet," and that Armstrong gave him the check already filled

out for \$250 and said to give it to the landlord for the rent. Carpenter said that he had no idea that the check was stolen, he just thought that Armstrong was trying to help him out because he did not have steady employment, and he did not think it was weird that Armstrong did not cash the check and give him the cash. Carpenter testified that he did not think the check was already made out to David Rhoda when he received it. Upon the trial court's questioning, Carpenter said that he had allowed Armstrong to stay with him for about a week and a half, but that the check was for two and a half weeks' rent.

After resting its case, the defense renewed its motions for directed verdict, which were denied. The trial court initially took the matter under advisement and then found by a preponderance of the evidence that Carpenter had violated the terms of his probation. Carpenter was sentenced to six years' imprisonment on each of the underlying offenses, with the sentences to be served concurrently.

Carpenter first argues on appeal that the trial court erred in taking judicial notice of the court's file at the beginning of the hearing. However, Carpenter made no objection to the trial court taking judicial notice of the case file when the statement was made. Rather, he did not object until his motion for directed verdict. To challenge a ruling on appeal, Carpenter was required to object to it at the first opportunity. *See George v. State*, 356 Ark. 345, 151 S.W.3d 770 (2004). Because Carpenter did not object at the first opportunity, he did not preserve this issue for appeal.

Carpenter's second argument on appeal is that there was insufficient evidence to revoke his probation. A trial court may revoke a defendant's probation at any time prior

to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In probation revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only show that the appellant committed one violation in order to sustain a revocation. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). In testing the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988).

Here, the trial court found that Carpenter had violated three conditions of his probation. Carpenter correctly argues that the trial court improperly revoked his probation on the basis that he had not paid supervision fees, as those fees had been waived as a condition of probation by a previous order of the trial court and the State had withdrawn that particular allegation at the beginning of the revocation hearing. However, we disagree with Carpenter's argument that because the trial court improperly revoked his probation on this basis that it casts serious doubt on the trial court's ultimate decision to revoke his probation. The State is only required to prove one violation, and the trial court found three different violations.

The second alleged violation of a condition of probation was the forgery charge. Possession of a forged instrument by one who offers it, without reasonable explanation of the manner in which he acquired it, warrants an inference that the possessor committed the forgery or was an accessory to its commission. *Deshazer v. State*, 94 Ark. App. 363, 230 S.W.3d 285 (2006). In this case, David Rhoda testified that Carpenter said that he received the check for work he did, but the testimony of Hot Springs police officers and of Carpenter himself indicated that Aaron Armstrong gave Carpenter the check because Armstrong had been staying with Carpenter and wanted to help with the rent. We cannot say that the trial court's determination that Carpenter's explanation regarding the check was unreasonable was clearly against the preponderance of the evidence. Because we hold that there was sufficient evidence to revoke Carpenter's probation on the basis that he committed forgery, it is unnecessary to address whether Carpenter violated a third condition of probation by failing to pay restitution.

Affirmed.

HEFFLEY and BAKER, JJ., agree.