ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION II

CACR07-349

October 10, 2007

CAMERON LAMONT SMITH
APPELLANT

APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. CR-2004-185]

V.

HON. J. MICHAEL FITZHUGH, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

In 2004, appellant was charged as a habitual offender with possession of a controlled substance (cocaine). Later that year, appellant entered a negotiated plea of guilty to the reduced charge of possession of drug paraphernalia. He was sentenced to one year of imprisonment with imposition of any additional sentence suspended for a period of nine years on various conditions, including that he not violate the law. In 2006, a petition to revoke appellant's suspended imposition of sentence was filed, alleging that he violated the conditions of his suspension by committing the offense of delivery of cocaine. After a hearing, the trial court found that appellant violated the conditions of his suspension and sentenced him to nine years' imprisonment. Appellant now argues that the evidence was insufficient to support the trial judge's finding that he violated the terms of his suspension. We affirm.

To revoke probation or a suspended sentence, the State must prove the violation of a condition of the probation or suspended sentence by a preponderance of the evidence. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). The trial court's findings will be upheld on appeal unless they are clearly against the preponderance of the evidence. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or suspended sentence. *Id*. Because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position with regard to these questions. *Id*.

In the present case, there was evidence that Fort Smith Police officers learned from a confidential informant that appellant was engaged in the sale of cocaine. Two controlled buys took place in December of 2005, during which police were able to hear sales of crack cocaine by the appellant to the informant, who returned the substances obtained from appellant to the officers. These substances were examined in the State Crime Laboratory and were confirmed to be crack cocaine. Although the officers did not witness the transactions, one officer testified that he had past experience with appellant, that appellant had a distinctive voice, and that he recognized the voice of the seller as that of appellant. Another officer testified that appellant, upon questioning, admitted to engaging in the sale of cocaine during December 2005. Giving due deference to the trial judge's superior position to assess

the credibility of the witnesses, we cannot on this record say that he clearly erred in finding that appellant violated the conditions of his suspension.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.