

Cite as 2011 Ark. App. 350

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR 10-973DOUGLAS A. ANDERSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** May 11, 2011APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR 2005-897]HONORABLE J. MICHAEL FITZHUGH,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Douglas Anderson appeals the circuit court's order revoking his suspended imposition of sentence. We affirm.

Anderson was convicted of theft by receiving and three counts of commercial burglary on February 10, 2006. He was sentenced to serve twenty years in jail with an additional twenty years suspended and ordered to pay \$114,279.21 in restitution at a rate of \$100 per month. Anderson's suspended sentence was conditioned, among other things, on his not violating any state law and paying restitution as ordered. Anderson was released from the Arkansas Department of Correction on September 8, 2009.

On June 15, 2010, the prosecuting attorney filed a petition to revoke, stating that Anderson had violated the terms of his suspended sentence by committing first-degree

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terroristic threatening on June 6, 2010, and failing to pay restitution as ordered. At a hearing on July 30, 2010, the circuit court found by a preponderance of the evidence that Anderson violated the conditions as the State had alleged. Anderson was sentenced to six years in the Arkansas Department of Correction with an additional thirty-four years suspended. On appeal, Anderson argues that the State failed to show that he violated the conditions of his suspended sentence by a preponderance of the evidence and asks this court to dismiss the State's petition to revoke.

A court may revoke a defendant's suspended sentence only if the State proves by a preponderance of the evidence that the defendant failed to comply with the conditions. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). On appellate review, the trial court's findings are upheld unless they are clearly against a preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Deference is given to the circuit court's superior position to weigh the evidence and determine witness credibility. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). In order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998).

The court heard conflicting evidence regarding the events of June 6, 2010. The State called Tammy Hobbs, the sister of Anderson's ex-girlfriend, to testify that, on June 5, 2010, Anderson came to the flea market where she and her family worked, and he was asked to leave after threatening Hobbs's father. She said that Anderson came back the next day, and he flipped her off. Hobbs testified that she told Margie Sellers, the manager of the flea market,

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what Anderson had done, and Sellers stopped Anderson at the gate to tell him not to return. Anderson began to cuss and threaten her. Specifically, she testified that Anderson said, “I will kill you and your whole family. You don’t know what I can do, and the bad thing is you won’t even know when it is coming.” Hobbs’s parents drove into the parking lot, and she claims that Anderson threatened to kill them, as well.

Anderson claims that he did not know that his ex-girlfriend’s family had a problem with him when he came to the flea market on June 6, 2010, with a friend. He and his friend both testified that there was no altercation while they were in the flea market, and only when they were driving away did two men stop them and ask why Anderson had flipped off someone in the store. Anderson said that they were trying to leave but were blocked by Hobbs’s parents, who were threatening and yelling at him. Anderson argues that he never threatened anyone, and he was afraid.

Sellers testified that while she did not hear any of the comments, she remembers nothing impeding Anderson from leaving the parking lot. Marilyn Sue Young, a booth owner at the flea market, testified that she heard Anderson yelling and threatening to kill someone as he was leaving the flea market. She also claims that the driveway was never blocked.

The circuit court found by a preponderance of the evidence that Anderson committed first-degree terroristic threatening, defined as threatening to cause death or serious physical injury or substantial property damage to another person with the purpose of terrorizing another person. Ark. Code Ann. § 5-13-301(a)(1)(A) (Repl. 2006).

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The court's finding that Anderson committed first-degree terroristic threatening is not clearly against a preponderance of the evidence. The only neutral witness, Young, testified that she heard Anderson threaten to kill someone. The circuit court was in the best position to observe the demeanor of the witnesses, and the court found the State's witnesses to be more credible than Anderson's. We hold that the trial court's finding that Anderson violated the terms and conditions of his suspended sentence by committing the offense of first-degree terroristic threatening is not clearly against the preponderance of the evidence.

Because a single violation is sufficient to support the revocation of a suspended sentence, this court need not address Anderson's arguments regarding restitution.

Affirmed.

ABRAMSON and BROWN, JJ., agree.