

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-14-840

MICHAEL THEODIS BOYLAND
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE**Opinion Delivered** April 22, 2015APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[Nos. CR-2011-165B, CR-2011-861]HONORABLE J. MICHAEL FITZHUGH,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Michael Boyland appeals the Sebastian County Circuit Court’s September 3, 2014 sentencing order revoking his suspended impositions of sentence (SIS) in two cases, CR-11-165B and CR-11-861. It is undisputed that Boyland failed to pay restitution and fees; his only argument on appeal is that the failure was not willful. We affirm.

In reviewing the circuit judge’s decision to revoke SIS, we have explained that

[a] trial court may revoke a defendant’s suspension at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his suspension. Ark. Code Ann. § 16-93-308(d) (Supp. 2013). This court will not reverse the trial court’s decision to revoke unless it is clearly against the preponderance of the evidence. *Owens v. State*, 2009 Ark. App. 876, at 6, 372 S.W.3d 415, 419. On appeal, appellant argues that the evidence was insufficient to prove that he “inexcusably” failed to comply with a condition of his suspension as required for revocation under Ark. Code Ann. § 16-93-308(d). “Forgivable, pardonable, and excusable behavior” does not justify a probation revocation. *Schubert v. State*, 2013 Ark. App. 698, at 4.

Reyes v. State, 2015 Ark. App. 55, at 2.

Boyland pled guilty to two charges of commercial burglary and was sentenced to two years' imprisonment, plus eight years' SIS in each case, to run concurrently. He was also assessed a \$100 public-defender fee and ordered to pay restitution in the amount of \$179,850.22. A monthly payment plan was established for Boyland's restitution and fees. After Boyland was released from the Arkansas Department of Correction, he admittedly failed to make any payments.

On November 22, 2013, the State filed a petition to revoke Boyland's SIS based upon his failure to pay restitution and fees. At the revocation hearing, Boyland testified that he had been unable to pay because he also had outstanding fines and fees in two other counties and had been repeatedly picked up and jailed for failure to pay in those cases. He testified that he could not get or hold a job, in part because he was often jailed on those debts. He explained that he was working very hard to stay out of trouble and was making money by doing odd jobs and collecting cans. The circuit court took the issue under advisement and gave Boyland an additional ninety days to get a job and begin making payments. However, Boyland made no payments and did not appear at the second hearing. At a third hearing, he testified that he had failed to appear because he had been imprisoned in another county on new charges. He explained that he had gotten a job doing lawn care, but he had used the money to pay his bond on the new charges and to make a \$1000 down-payment on a truck. The circuit court found him in violation of the terms of his SIS for failure to pay restitution and fees, revoked the SIS, and sentenced him to eight years' imprisonment on each charge.

Boyland's only argument on appeal is that his failure to pay was not willful. He claims that it was pardonable or excusable behavior because he did not have the means to pay and

was obligated to make numerous other court-ordered payments in other counties. He explained that his ability to get a job was greatly hampered by constant arrests on the outstanding fees. However, there was sufficient evidence to support the circuit court's finding that Boyland's failure to pay was willful. Boyland chose to spend \$1000 on a down-payment on a truck rather than make required restitution payments. The down-payment would have amounted to approximately twenty percent of Boyland's past-due restitution under the monthly payment plan. Boyland chose to pay fees in other counties, including his bond on new charges, before making payments in these cases. Finally, Boyland was advised at the first revocation hearing that if he could not make his payments, he should contact the circuit court and request an adjustment of the amount. He did not do so. Therefore, a preponderance of the evidence supported a finding that Boyland's failure to pay restitution and fees was willful. We affirm.

Affirmed.

HOOFFMAN and BROWN, JJ., agree.

David L. Dunagin, for appellant.

Leslie Rutledge, Att'y Gen., by: *Evelyn D. Gomez*, Ass't Att'y Gen., for appellee.