

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-14-921

CEDRICK PASCHAL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 17, 2015

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. CR-09-263A-5]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED; MOTION GRANTED

KENNETH S. HIXSON, Judge

Appellant Cedrick Paschal pleaded guilty to residential burglary on October 21, 2010, and he was sentenced to ten years in prison followed by a five-year suspended imposition of sentence. Mr. Paschal was released from prison on May 28, 2013. On April 17, 2014, the State filed a petition to revoke Mr. Paschal's suspended imposition of sentence, alleging multiple violations including being a felon in possession of a firearm, possession of drug paraphernalia, and testing positive for marijuana and amphetamines. After a hearing, the trial court entered an order August 1, 2014, revoking appellant's suspension and sentencing him to fifteen years in prison. Mr. Paschal now appeals from his revocation, and we affirm.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit. Mr. Paschal's counsel's motion was

accompanied by a brief discussing all matters in the record that might arguably support an appeal, including any objections and motions made by appellant and denied by the trial court, and a statement of the reason why each point raised cannot arguably support an appeal. Mr. Paschal was provided a copy of his counsel's brief and notified of his right to file pro se points for reversal, and Mr. Paschal has exercised his right to file pro se points.

The conditions of Mr. Paschal's suspension required that he not use or possess any controlled substance. At the revocation hearing, the State presented testimony and documentation showing that Mr. Paschal had tested positive for marijuana and amphetamines on September 11, 2013, and again on November 20, 2013.

Mr. Paschal's conditions also prohibited him from committing any offense punishable by imprisonment. Officer Michael Caldwell testified that, on March 17, 2014, he assisted appellant's parole officer in locating Mr. Paschal on an absconding warrant. Officer Caldwell went to the house where appellant was living, and appellant's cousin answered the door. Officer Caldwell went into Mr. Paschal's bedroom, where Mr. Paschal was getting dressed, and noticed several baggies with the bottoms ripped out of them. Officer Caldwell testified that these items were consistent with drug use. In plain view, Officer Caldwell observed several rounds of ammunition, and when he asked Mr. Paschal if he had any weapons in the room, Mr. Paschal stated that there were three firearms in the closet that belonged to his father. Officer Caldwell looked in the closet and discovered two shotguns and a rifle. During this encounter Mr. Paschal gave Officer Caldwell permission to search, and he told the officer that there was a meth pipe under the covers where he had been sleeping. Officer Caldwell

found that meth pipe as well as another meth pipe in appellant's bedroom. According to Officer Caldwell, Mr. Paschal told him that he had been using methamphetamine.

Arkansas Code Annotated section 16-93-308(d) (Supp. 2013) provides that, if a court finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his suspension, the court may revoke the suspension at any time prior to the expiration of the suspension. On appeal, the trial court's decision will not be reversed unless it is clearly against the preponderance of the evidence. *Dawson v. State*, 2015 Ark. App. 23.

The only adverse ruling in this case was the trial court's decision to revoke appellant's suspension, and appellant's counsel accurately asserts that there can be no meritorious challenge to the sufficiency of the evidence supporting revocation. Although the State proved multiple violations of the suspension at the revocation hearing, only one is necessary to sustain the revocation. See *Reynolds v. State*, 2012 Ark. App. 705. The State demonstrated that, during the period of his suspension, Mr. Paschal tested positive for controlled substances in violation of his conditions. As appellant's counsel states in the no-merit brief, this alone was a sufficient basis to revoke. We agree with counsel that the trial court's decision was not clearly against the preponderance of the evidence and that any argument to the contrary would be without merit.

In Mr. Paschal's pro se points, he asserts that the firearms belonged to his father and that he had just recently moved into his father's house. He further asserts that there was no fingerprint testing on the firearms or the meth pipes, and no testing to confirm any drug

residue. Mr. Paschal also claims that the underlying criminal charges for possession of firearms by certain persons and possession of drug paraphernalia were later dismissed.

Despite appellant's claim that he had just moved into his father's house, Officer Caldwell testified that Mr. Paschal told him that he had been living there for several weeks. Officer Caldwell believed that Mr. Paschal was living in that room based on his observation that appellant's clothes were there along with other personal items, including Mr. Paschal's driver's license. The ammunition was in plain view, and the closet containing the firearms was just a few feet from the bed where Mr. Paschal slept. Fingerprint testing is not necessary to prove constructive possession, *Morgan v. State*, 2009 Ark. 257, and constructive possession can be inferred when the contraband was found in a place immediately and exclusively accessible to the accused and subject to his control. *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). In this case the State provided proof that Mr. Paschal constructively possessed the firearms and meth pipes, and Mr. Paschal told the police where one of the pipes could be found and admitted to using methamphetamine. Moreover, even if the underlying criminal charges were dismissed, as appellant claims, the burdens are different, and evidence that is insufficient for a criminal conviction may be sufficient to revoke a suspended sentence. See *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). And finally, in Mr. Paschal's pro se points he does not challenge the trial court's finding that he had positive drug tests, which was a sufficient basis to revoke independent of the proof that he had possessed firearms and drug paraphernalia.

In Mr. Paschal's pro se points, he also notes that his counsel's brief mistakenly identified the revocation hearing date as October 21, 2010, instead of July 23, 2014. However, this is obviously a mere scrivener's error and provides no basis for reversal of the revocation.

Based on our review of the record and the briefs presented, we conclude that there has been compliance with Rule 4-3(k)(1) and that the appeal is without merit. Consequently, appellant's counsel's motion to be relieved is granted and the judgment is affirmed.

Affirmed; motion granted.

WHITEAKER and VAUGHT, JJ., agree.

N. Mark Klappenbach, for appellant.

Leslie Rutledge, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.