

Cite as 2023 Ark. App. 66  
**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CR-22-302

KYLE MYATT		Opinion Delivered February 15, 2023
	APPELLANT	APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. 28CR-15-197]
V.		
STATE OF ARKANSAS		HONORABLE RANDY F. PHILHOURS, JUDGE
	APPELLEE	
		AFFIRMED

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**N. MARK KLAPPENBACH, Judge**

Kyle Myatt appeals from the order of the Greene County Circuit Court revoking his probation. We affirm.

In October 2015, Myatt was placed on six years' probation upon pleading guilty to possession of a controlled substance with the purpose to deliver, two counts of delivery of a controlled substance, and two counts of endangering the welfare of a minor. On March 16, 2021, the State filed a petition to revoke Myatt's probation. The State alleged in the petition that Myatt had violated the terms of his probation by failing to report; traveling out of state without permission; committing several new offenses; failing to pay court costs, fines, and fees; failing to provide verification of drug counseling; and lying about his whereabouts.

At the revocation hearing, Myatt's probation officer, Sarah Hughs, testified that Myatt had tested positive for drugs on multiple occasions; had failed to report as directed; had traveled out of state without permission; had failed to pay court costs, fees, and fines as directed; and had failed to attend drug counseling. Hughs was the only witness to testify. The circuit court found that Myatt had violated the conditions of his probation: there was proof that he had failed to report; left the state without permission; failed to pay his court costs, fines, and fees; failed to provide verification of drug counseling; and lied about his whereabouts. The State called Hughs to testify again before the court pronounced Myatt's sentence. Subsequently, the court revised its ruling, stating that it was not going to consider failure to pay as a basis for the revocation; instead, "it's the positive drug testing, the failure to report, and leaving the state without permission that is the basis of the finding in guilt." The court sentenced Myatt to six years' imprisonment and fourteen years' suspended imposition of sentence.

A circuit court may revoke a defendant's probation at any time before 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 or her probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2021). When the sufficiency of the evidence is challenged on appeal from an order of revocation, this court will not reverse the circuit court's decision to revoke unless it is clearly against the preponderance of the evidence. *Chambers v. State*, 2018 Ark. App. 69, 540 S.W.3d 316. Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the circuit

court's superior position. *Id.* The State need only show that the appellant committed one violation in order to sustain a revocation. *Id.*

Myatt argues that there was insufficient evidence that he had failed to report as directed because there was no evidence as to how and when he was directed to report. He claims that the circuit court was left to speculate regarding when he was told to report and by what means that information was conveyed to him. We disagree. Probation Officer Hughs testified that Myatt "failed to report for his scheduled office visit" on January 25, 2021, and on February 23 and 26, 2021, "he failed to report as directed." Hughs's testimony that Myatt was directed to report and that a visit was scheduled is sufficient evidence for the circuit court to find that the direction to report had been communicated to Myatt. We find no clear error in the circuit court's determination that Myatt inexcusably violated the terms and conditions of his probation by failing to report as directed.

Although only one violation is sufficient to affirm revocation, we also note that Myatt has failed to adequately challenge other grounds for revocation relied on by the circuit court. He argues that revocation cannot be based on positive drug tests or on leaving the state without permission because those violations were not alleged in the petition to revoke, and there was no request that the pleadings be amended to conform to the proof. However, the petition did allege that Myatt had traveled to Michigan and Illinois without permission. Furthermore, the failure to object to the introduction of evidence on an unalleged violation or to the circuit court's revocation on an unalleged violation waives such an argument on

appeal. See *Wilder v. State*, 2021 Ark. App. 131. Because Myatt failed to object below, he has waived this argument on appeal.

Affirmed.

BARRETT and MURPHY, JJ., agree.

*Terry Goodwin Jones*, for appellant.

*Leslie Rutledge*, Att’y Gen., by: *Walker K. Hawkins*, Ass’t Att’y Gen., for appellee.