

Cite as 2023 Ark. App. 419
ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-23-37

GYEON PORTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 27, 2023

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. 16JCR-21-260]

HONORABLE CHRIS THYER, JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Gyeon Porter appeals the Craighead County Circuit Court’s revocation of his probation. Despite the circuit court’s revocation of Porter’s probation based on Porter’s inexcusable failure to comply with several conditions alleged by the State in its petition to revoke, Porter challenges only the sufficiency of the evidence related to the finding that he violated a term and condition of his probation by possessing a firearm and illegal drugs. Because Porter did not attack all the bases for the circuit court’s decision, we affirm. This is a companion case to *Porter v. State*, 2023 Ark. App. 420, also handed down today.

On February 23, 2021, Porter pleaded guilty to possession of drug paraphernalia with the purpose to manufacture in violation of Arkansas Code Annotated section 5-64-443(d) (Supp. 2023), in case No. 16JCR-21-233. He was sentenced to thirty-six months’ probation and ordered to pay \$665 in fines, fees, and costs. Then, on October 11, Porter pleaded guilty

to second-degree domestic battering in violation of Arkansas Code Annotated section 5-26-304(a)(1) (Supp. 2023), in case No. 16JCR-21-260. In that case, he was sentenced to sixty months' probation and ordered to pay \$540 in fines, fees, and costs. In both cases, Porter signed copies of the orders of probation, both of which included a list of terms and conditions that he was to follow.

On April 26, 2022, the State filed petitions to revoke in both cases. The petitions were identical and asserted that Porter had violated the conditions of his probation by (1) committing the new offenses of possession of a firearm by certain persons, possession of methamphetamine/cocaine with the purpose to deliver, and possession of a controlled substance; (2) failing to obtain stable employment; (3) failing to provide a valid residential address; (4) failing to pay supervision fees as directed, becoming \$180 in arrears; and (5) not making any payments toward fines and court costs and owed a total of \$665 to the Craighead County Sheriff's Department.

On September 16, the circuit court heard evidence on the petitions to revoke in a combined hearing. At the outset of the hearing, the State asked the circuit court to take judicial notice of both case files, which it did so without objection. Both case files contained a copy of Porter's most recent community-correction violation report, which provided that Porter was arrested on April 12, 2022, and charged with possession of a firearm by certain persons and was incarcerated at that time. The same records further indicate that officers encountered Porter at his home after a call regarding suspicion of drug activity in the area. Officers found a pistol, suspected ecstasy, and marijuana in Porter's apartment.

At the hearing, Steve Wood, Porter’s probation officer, testified that he was assigned to supervise Porter for both cases. Wood testified that Porter had failed to report for his initial intake as well as for several other scheduled probation meetings. Wood testified that Porter had absconded, failed to report as directed, failed to maintain a stable employment, failed to give a valid residential address, failed to pay probation fees, and failed to pay court-ordered fines and costs.¹ Wood further testified that on or about April 12, 2022, he received a notification that Porter had been arrested in Craighead County. Wood called the jail to verify the charges and learned that Porter was arrested for “possession of a firearm by a certain person, possession of methamphetamine or cocaine with purpose to deliver and possession of a controlled substance less than four ounces.”

Craighead County Sheriff’s Office Sergeant Taylor Iglehart also testified at the hearing. On April 12, 2022, he was working as part of a joint task force with the United States Marshal’s Service when he attempted to serve an arrest warrant at 1817 Self Circle in Jonesboro. He was not there to serve the warrant on Porter, specifically. When Sgt. Iglehart knocked on the door, it opened. Porter tried to run to the back of the single-bedroom apartment, but officers with the task force were able to stop him before he could get to the bedroom. Porter told the officers that he had been living there “for a little while.”

¹It should be noted that a petition for revocation alleging Porter had absconded was filed only in the companion case, *Porter v. State*, 2023 Ark. App. 420. Nevertheless, the second petition for revocation discussed above, which provided the additional probation violations, was filed in both cases.

Sergeant Iglehart ran Porter's name through dispatch, which informed him that Porter was a probationer with an arrest warrant and a search waiver on file. He also noticed a strong odor of marijuana. Upon conducting a search, officers found a plastic container in the bedroom labeled "Flower Premium Cannabis" containing 9.4 grams of marijuana. Also in the bedroom they found a bag of an unknown white powdery substance and a .32-caliber handgun. In the kitchen, officers found forty-eight pills, suspected to be ecstasy, on the counter in a clear plastic bag. Photos of the marijuana container, a baggie of powder, the firearm, the marijuana, and the suspected ecstasy were admitted into evidence.

Porter was arrested at the scene and charged with possession of a firearm by certain persons, possession of a controlled substance with purpose to deliver for the ecstasy, and possession of a controlled substance less than four ounces for the marijuana. At the conclusion of the hearing, the circuit court ruled from the bench:

Clearly, what the Court heard based on the proof before it today, was that as the proof stands today, Mr. Porter was living in the residence at the time and there was suspected marijuana, at least by a preponderance of the evidence, marijuana and ecstasy found in that residence that he was living. Both the ecstasy was in plain view and marijuana was in the sole bedroom in the house.

Most importantly, however, the Court finds that that gun sitting on the only bed in the house that Mr. Porter told the officer that he was living in, having been previously convicted of a felony with a round in the chamber and a full magazine, the Court finds that that by itself would be sufficient to violate previous terms and conditions of Mr. Porter's probation, to say nothing of Mr. Porter's absconding, not reporting to probation, not paying his fees, not doing all of those other things that were testified to by Agent Woods.

The court found that Porter had violated the terms and conditions of his probation in both cases and revoked his probation in both. Porter was sentenced to ten years'

imprisonment for second-degree domestic battering in case No. 16JCR-21-260, which correlates to this case, and six years' imprisonment for possession of drug paraphernalia in case No. 16JCR-21-233, which correlates to the companion case, CR-23-38. Porter's briefs in both cases are identical; on appeal in both cases. he challenges only the sufficiency of the evidence that demonstrated he violated a term and condition of his probation when the court found he possessed a firearm and illegal drugs.²

A circuit court may revoke a defendant's probation at any time prior to its expiration if the court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with one of its conditions. Ark. Code Ann. § 16-93-308(d) (Supp. 2023); *Jones v. State*, 2022 Ark. App. 511, at 4, 656 S.W.3d 219, 222. The State has the burden of proving the defendant violated a condition of probation; however, it is only required to establish one violation to sustain the revocation. *Stultz v. State*, 92 Ark. App. 204, 208, 212 S.W.3d 42, 44 (2005). A preponderance of the evidence is convincing evidence that is more probably accurate and true when weighed against the evidence opposed to it. *Payne v. State*, 2017 Ark. App. 265, at 2, 520 S.W.3d 699, 701.

On appeal from a circuit court's revocation of probation, we view the evidence in the light most favorable to the State and uphold the circuit court's findings unless they are clearly

²Porter does lead his briefs with the assertion that the State failed to "present any evidence regarding the specific terms and conditions of [his] probation"; however, he does not develop the argument beyond this sentence. Even still, the court took judicial notice of the record in these cases without objection. Those records contained the applicable signed terms and conditions of probation for each case.

against the preponderance of the evidence. *London v. State*, 2017 Ark. App. 585, at 3, 534 S.W.3d 758, 760. We defer to the circuit court's superior position in evaluating the credibility and weight of testimony presented at the revocation hearing. *Id.*

Porter argues that the State failed to prove that he was in possession of the firearm or the controlled substances—ecstasy and marijuana—that were found when Iglehart searched his apartment. However, Porter ignores that the circuit court revoked his probation for more than just committing the new offenses. When the circuit court bases its decision on multiple independent grounds and the appellant fails to attack any independent, alternative bases, we will affirm. *Clark v. State*, 2019 Ark. App. 362, at 5, 584 S.W.3d 680, 683. Porter does not challenge the circuit court's finding that he failed to obtain stable employment, provide a valid residential address, or pay fees and costs.

Affirmed.

GLADWIN and GRUBER, JJ., agree.

Terry Goodwin Jones, for appellant.

Tim Griffin, Att'y Gen., by: *Adam Jackson*, Ass't Att'y Gen., for appellee.