ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-905

	Opinion Delivered September 9, 2009
CHARLES T. BAGLEY APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT [NOS. CR-2004-1111; CR-2006-79]
V.	HONORABLE J. MICHAEL FITZHUGH, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

Charles T. Bagley appeals from the revocation of his prior suspended sentences. He contends that the decision to revoke is not supported by evidence that he violated the conditions of the suspension. We affirm.

In April 2005, appellant pled guilty to possession of drug paraphernalia, and imposition of sentence was suspended for five years conditioned on appellant paying fines, fees, and court costs. In March 2006, appellant pled guilty to residential burglary and second-degree domestic battery and was sentenced to a term of imprisonment plus an additional period of suspended imposition of sentence. The latter suspension was conditioned on appellant refraining from having any offensive contact with the victim, Angel Richardson. Following appellant's release from imprisonment and within the period of these suspensions, the State filed a petition to revoke alleging that appellant violated the conditions of the suspensions by failing to pay fines, fees, and costs, and by repeatedly attempting to contact Angel Richardson.

This resulted in an order entered May 9, 2007, modifying the conditions of suspension from "no offensive contact" with Angel Richardson to "no contact" with her whatsoever.

The State filed a second petition to revoke in December 2007, alleging that appellant had again violated the conditions of his suspensions by failing to pay fines and by failing to abide by the no-contact order. After a hearing, the trial court found that appellant had violated those conditions, revoked his suspensions, and sentenced him to a term of imprisonment. This appeal followed.

In order to revoke a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of the suspension. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). The State bears the burden of proof, but it need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). On appeal from a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of a suspended sentence. *Palmer v. State*, 60 Ark. App. 97, 959 S.W.2d 420 (1998). In making our review, we defer to the superior position of the trial court to determine questions of credibility and weight to be given to the evidence. *Jones v. State*, 52 Ark. App. 179, 916 S.W.2d 766 (1996).

Angel Richardson testified that appellant repeatedly violated the no-contact order by sending her vulgar, offensive, and vaguely threatening communications. She also testified that she communicated with appellant's mother to keep track of his whereabouts because she was

afraid of him and wanted to know where he was and what sort of mood he was in. Miss Richardson also testified that she and appellant attend the same church and that she saw him there on two occasions. On one such occasion, she testified, appellant manipulated her into driving him to his halfway house by accusing her of causing him to miss his ride. She also admitted that she had spent a night with appellant in a motel when the no-offensive-contact order was in effect.

Appellant testified that he had not contacted Miss Richardson since his release. He did not categorically deny making the communications, but stated that they were made before the no-contact order went into effect. Appellant's mother testified that Miss Richardson had initiated contact with appellant and that she had gone to appellant's halfway house to do so. Appellant, however, denied that Miss Richardson had ever visited or communicated with him at the halfway house.

The record fairly shows that Miss Richardson did have consensual contact with appellant when the "no offensive contact" order was in effect. The rest of the evidence was in sharp dispute. The issue turns on an assessment of the credibility of the witnesses and, giving the trial judge's credibility assessments the deference to which they are entitled, we cannot say that the trial court clearly erred in finding that appellant violated the conditions of his suspensions by making repeated offensive contacts with Miss Richardson while the "no contact" order was in effect. Because violation of a single condition of suspension is sufficient to support revocation, we need not address the sufficiency of the evidence to support a finding that appellant willfully failed to pay his fine and fees.

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.