

Cite as 2009 Ark. App. 608

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR09-148

JOSEPH WESLEY MAY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 23, 2009APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[CR-2006-120]HONORABLE ROBERT EDWARDS,
JUDGE

AFFIRMED

DAVID M. GLOVER, Judge

The White County Circuit Court revoked appellant Joseph May's probation and sentenced him to ten years' imprisonment. On appeal, May argues that the trial court erred in revoking his probation because a failed drug screen showed a possible dilution and because the failure to pay his fines and costs was excusable. We affirm.

May pleaded guilty on October 4, 2006, to the offenses of furnishing prohibited articles into a correctional facility and possession of drug paraphernalia, and he was placed on four years' probation. On March 5, 2008, the State filed a petition to revoke May's probation, alleging that May had positive drug tests on May 9, 2007, August 6, 2007, and February 4, 2008; that he had failed to report to his probation officer on several occasions; that he was delinquent in the payment of his supervision fees, fines, court costs, and DNA

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testing cost; and that he had failed to complete any of his eighty hours of community service or his substance-abuse counseling.

Lindsey Gooch, May's probation officer, testified at the revocation hearing that May had failed to report for office visits on several occasions; had a positive drug screen for creatin on August 6, 2007; was delinquent on his fees, fines, court costs and DNA processing fee; and had not completed any of his eighty hours of community service or his substance-abuse counseling.

Alan Smallwood, May's employer, testified that when payroll checks were issued, he would go with May to get money orders to pay the fees and costs, and that May would give the money orders to his girlfriend to take to the courthouse, but that May learned several months ago that she had been signing the money orders over to herself and spending them. May testified that he and his girlfriend separated after he learned that she was using the money to pay her probation fees instead of his fines and fees. He also testified that a former employer made payments on the misdemeanor fine but not on the felony fine because May did not realize that the felony-fine payments had to be made in a different place. May did not admit that he had failed any drug test, but he did testify that he had not "used" in three or four months.

In revoking May's probation, the trial court stated that it understood that May's girlfriend had caused him problems, but even though a few of May's payments had been "filtered off," that did not account for him making zero payments since October 2006. The trial court also found that May had not performed his community service and that he had, by

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his own admission, continued to use drugs after the revocation petition was filed and within three or four months of the revocation hearing.

A trial court may revoke a defendant's probation at any time prior to 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 probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In probation revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only show that the appellant committed one violation in order to sustain a revocation. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

May argues that the August 6, 2007 positive drug screen could not be used against him because it only showed a possible dilution, and that his failure to pay his fees and costs was excusable because of his former girlfriend's actions. We need not address these arguments, as May left at least one of the grounds for the revocation of his probation unchallenged – his failure to perform his court-ordered community service. This was a condition of May's probation, the revocation petition listed this as a reason to revoke his probation, his probation officer testified at the revocation hearing that he had not performed any of his community service, and the trial court specifically listed the failure to perform community service as a

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reason for revocation. The State need only prove one violation in order to sustain a revocation, which it did by May's failure to perform his community service.

Affirmed.

GLADWIN and HENRY, JJ., agree.