

Cite as 2009 Ark. App. 808

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR08-1252

AMY LADONNA ELKINS,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE**Opinion Delivered** 2 DECEMBER 2009APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR-06-233-1]THE HONORABLE GARY
COTTRELL, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

This is the on-the-merits sequel to a no-merit appeal in which we ordered rebriefing. *Elkins v. State*, 2009 Ark. App. 536, ___ S.W.3d ___. The circuit court revoked Amy Elkins’s suspended sentence because she failed to pay court-ordered costs, fees, and restitution—conditions of her suspended sentence. Elkins now challenges the sufficiency of the evidence supporting her revocation.

In revoking Elkins’s suspended sentence, the circuit court found that Elkins had willfully failed to make her court-ordered payments. While the court acknowledged that Elkins had planned to catch up on her payments, it found that excuse “totally insufficient” because she had been employed and yet still not paid.

The preponderance of the evidence supports the circuit court’s decision. *Reese*

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v. State, 26 Ark. App. 42, 44, 759 S.W.2d 576, 577 (1988). The State introduced a payment ledger noting the two payments Elkins had made toward fulfilling her financial obligation. Elkins admitted that she had made those payments only in the past two weeks, even though she knew that they had been due for more than a year. She also testified that she received a letter warning that her suspended sentence might be revoked if she failed to pay. She still made no payments, even though she worked a job for several months. When the State asked her “you’d been working at Cracker Barrel three months; you had a letter from our office a year prior to that, saying, you haven’t paid; you need to pay; there’s going to be a warrant. And you still didn’t make a payment[?]” Elkins responded: “Correct.” Elkins offered no reason for her failure to pay. She suggested only that she had hoped “everything would be okay” in court because of her two recent payments.

Failing to make court-ordered payments supports revoking a suspended sentence so long as the failure is willful. *Jordan v. State*, 327 Ark. 117, 122, 939 S.W.2d 255, 257 (1997); Ark. Code Ann. § 5-4-309(d) (Supp. 2009). Elkins asserted no blanket inability-to-pay defense; and therefore the State had no obligation to offer evidence of the Ark. Code Ann. § 5-4-205(f)(3) factors or show a lack of good-faith effort. *Cf. Phillips v. State*, 101 Ark. App. 190, 192–93, 272 S.W.3d 123, 124–25 (2008). We defer to the circuit court’s determination of willfulness—a fact question—because it

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must judge Elkins's credibility. *Gossett v. State*, 87 Ark. App. 317, 319, 191 S.W.3d 548, 549 (2004). Given Elkins's admission that she knew of her financial obligation but disregarded it even though she was employed, we affirm the revocation.

Affirmed.

GRUBER and HENRY, JJ., agree.