

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR08-867

WILLIAM WACASER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** April 1, 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. CR2007-3059]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

**LARRY D. VAUGHT, Chief Judge**

William Wacaser appeals the Pulaski County Circuit Court’s order revoking his probation. He argues that there was insufficient evidence to support the revocation. We affirm.

On November 16, 2007, Wacaser pled guilty to aggravated assault against a family member, first-degree terroristic threatening, and third-degree domestic battery. He was placed on six years’ probation. His conditions of probation included, among other things, an order to refrain from contact with the victim. Wacaser violated the no-contact order, and the State petitioned to revoke Wacaser’s probation. Wacaser pled guilty, and on January 4, 2008, the trial court again placed him on probation, with the added condition of electronic monitoring. The judgment and commitment order provided that:

[A]ll original conditions [of probation] to apply; in addition: Defendant to report to

Protrac Monitoring (Electronic Monitoring) in 24 hrs of 1-4-08 to be set up for electronic monitoring.

The Conditions of Release of Probation, which were signed by Wacaser, further provided that (1) he comply with electronic-monitoring rules for an unlimited time; (2) revocation would occur on the first infraction; and (3) there would be no second chances.

On January 8, 2008, the State filed a petition to revoke Wacaser's probation a second time, alleging that he failed to set up electronic monitoring as ordered by the court. At the hearing on the petition to revoke, the State presented the testimony of Lakeya Gipson, an administrative assistant with the Department of Community Correction. Gipson testified that she and Wacaser discussed, and he signed, the document outlining the conditions and terms of his probation on January 4, 2008, which included the condition that he was to report to Pro Trac for electronic monitoring within twenty-four hours.

Kelly Jackson testified that she was Wacaser's probation officer. Jackson was present in court with Wacaser on January 4, 2008, when he was ordered to comply with the rules of probation and to report to Pro Trac for electronic monitoring.

Finally, Kathy Stringer, the owner of Pro Trac electronic monitoring, testified that Wacaser entered her business on January 7, 2008, to set up electronic monitoring. Wacaser paid a \$100 deposit. Stringer then overheard an extended conversation between Wacaser and one of Stringer's employees discussing the requirements of electronic monitoring. Eventually, Stringer stepped into the conversation and advised Wacaser that he had to comply with the court rules for electronic monitoring, which included the requirement of

having a land-line telephone where he was living. Because Wacaser was residing at an extended-stay hotel, he advised that he did not have that capability. Stringer advised that Wacaser could move in with someone who had a land line or have one installed into his room at the hotel. Wacaser left Pro Trac but later called Stringer to advise that it would cost \$500 to have a line installed in his hotel room. Stringer told Wacaser to call her by the end of the day to let her know where he would be staying with a land line. Wacaser did not call Stringer back until January 17, 2008. In that call, Wacaser only requested a copy of the \$100 receipt for his deposit. Stringer testified that Wacaser never returned with verification about where he was living. Stringer forwarded a violation report to the trial court advising that Wacaser failed to enroll in electronic monitoring.

The trial court granted the State's petition to revoke and sentenced Wacaser to six years' imprisonment. Wacaser's sole point on appeal is that there was insufficient evidence to support the revocation. He specifically argues that there was insufficient evidence that his failure to comply with the condition of electronic monitoring was willful.

To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Id.* When appealing 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 probation or suspended sentence. *Id.* Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial court's superior position. *Id.*

In the present case, the evidence established that Wacaser inexcusably violated a condition of his probation by failing to set up electronic monitoring. There is no question that he was aware of the condition that he report to Pro Trac to have electronic monitoring set up within twenty-four hours of January 4, 2008. Two witnesses, Gipson and Jackson, confirmed this. Furthermore, Wacaser signed the conditions of release that clearly explained the electronic-monitoring requirement. Wacaser's actions demonstrated that he was aware of the electronic-monitoring condition because he went to Pro Trac, visited with the owner at length about electronic monitoring, and paid a deposit.

Despite being advised by Stringer that he had to provide verification that he was living somewhere with a land-line telephone so that electronic monitoring could be established, Wacaser did not follow through with this requirement. He did not make arrangements to have a land line installed in his hotel. He did not make arrangements to live with someone who had a land line. The record reflects that after Wacaser left Pro Trac on January 7, 2008, he never provided Pro Trac with the information required to set up electronic monitoring. As of the date of the revocation hearing on March 31, 2008, Wacaser still did not have electronic monitoring established.

Because the undisputed evidence demonstrates that Wacaser was aware of the condition that he establish electronic monitoring in a timely fashion and that he inexcusably

failed to do so, the trial court's revocation of his probation was not clearly against the preponderance of the evidence. Accordingly, we affirm.

Affirmed.

HART and BROWN, JJ., agree.