

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-1474

MELVIN PARKER,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered JUNE 3, 2009

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR-05-193]

HONORABLE DAVID BURNETT,
JUDGE

AFFIRMED

KAREN R. BAKER, Judge

On December 5, 2005, appellant Melvin Parker pled guilty to the offense of possession of a controlled substance with the intent to sell or deliver, a Class Y felony. He was placed on 120 months' probation. On October 26, 2007, the State filed a petition to revoke his probation. In the petition to revoke, the State alleged that appellant had violated the following conditions of his probation: failure to pay fines, costs, and fees as directed; failure to report to probation as directed; failure to pay probation fees; failure to notify sheriff and probation office of current address and employment; possession and use of cocaine; and departure from the State without permission.

A hearing was held on August 26, 2008. At the conclusion of the testimony, the Crittenden County Circuit Court revoked appellant Melvin Parker's probation and sentenced him to thirty-six months' imprisonment in the Arkansas Department of Correction and

eighty-four months' suspended imposition of sentence. On appeal, Parker asserts that the trial court's decision to revoke his probation was clearly against the preponderance of the evidence when Parker had reasonable excuses, particularly his indigence and poor health, for failing to pay, leaving the jurisdiction, and failing to report. He also asserts that the trial court abused its discretion by not granting his motion for a continuance. We affirm Parker's revocation.

We have held that to revoke probation or a suspended sentence, the burden is on the State to prove the violation of a condition of probation or suspended sentence by a preponderance of the evidence. See Ark. Code Ann. § 5-4-309(d) (Repl.2006); *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002); *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001); *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). On appellate review, the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Bradley, supra* (citing *Hoffman v. State*, 289 Ark. 184, 711 S.W.2d 151 (1986)).

Parker asserts that the trial court's decision to revoke his probation for failing to pay his court-ordered fines and costs was clearly against the preponderance of the evidence. Sherica Montgomery, an employee of the Department of Community Correction, testified for the State. She testified that she filed a violation report and had an arrest warrant issued for Parker because he failed to report as ordered, moved out of his residence without contacting her, and was \$375 in arrears on his supervision fees. Moreover, Debra Wiseman, an employee of the Crittenden County Sheriff's Department, testified that Parker had not made a single payment toward his court-ordered fines, costs, and fees totaling \$750, and had not made the court-ordered payment of \$1,500 to the Crittenden County Drug Fund. Once the State has

introduced evidence of nonpayment, the burden of going forward shifted to the defendant to offer some reasonable excuse for his failure to pay. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988).

Parker's only excuse for his delinquency in making payment was that he was indigent. The record showed that Parker was receiving a monthly disability check of \$700; yet, he admitted that he had not made one payment toward his court-ordered fines, costs, and fees. Parker testified that he used his monthly income to pay rent. He further testified that he did not receive his disability check while he was incarcerated, and that further impeded his ability to make payments. Nonetheless, Parker admitted that he had received two checks since he was released from jail, but had still "not paid anything." While Parker requested more time to meet his obligations and stated that he now had the opportunity for a part-time job to help him get "caught up" on his payments, the trial court is not required to believe any witness's testimony, especially that of the accused, since he is the person most interested in the outcome of the case. *Ross v. State*, 300 Ark. 369, 779 S.W.2d 161 (1989). Because Parker did not provide a reasonable excuse for his failure to pay, there was sufficient evidence to support the trial court's finding that Parker violated the conditions of his suspended sentence by failing to pay his fines, costs, and fees. The State 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).

Moreover, Parker asserts that the trial court erred in revoking his probation for violating the condition that he not leave the State without permission and for failure to report. However, Parker admitted during his testimony that he "reported to [his] probation officer

only a few times.” He also testified that he left the State to find housing because he was homeless, and he admitted that he did not report to the probation office that he was leaving the jurisdiction, even though he had access to a telephone. However, as discussed above, Parker’s excuse for leaving the State without permission and failing to report was that he was indigent, homeless, and in poor health. Again, the trial court did not have to believe his testimony, as he was the person most interested in the outcome of the case. *See Ross, supra.*

Parker’s final point on appeal is that the trial court abused its discretion by not granting his motion for a continuance. Parker asserts that “the court should have given him time to show the court that how he could act with his new part-time job, his social security check restored, and a stable place to live.” As to the denial of a motion for continuance, we review the trial court’s decision for an abuse of discretion. *Parker v. State*, 292 Ark. 421, 731 S.W.2d 756 (1987). ; *Mann v. State*, 291 Ark. 4, 722 S.W.2d 266 (1987). It is the appellant’s burden to demonstrate abuse of that discretion. *See id.*

Here, Parker moved for a continuance on the morning of his revocation hearing. His sole reason for requesting the continuance was so that he could have more time to demonstrate to the court that he could obtain stable housing, maintain a part-time job, and have his social security check restored. Yet, Parker had already received one additional opportunity to comply with his probation conditions when on April 8, 2008, the trial court granted a motion for continuance, moved the trial date to June 10, 2008, and ordered him to report to probation and pay fines, costs, and fees. Parker failed to do so. Under these facts, where Parker had previously been granted additional time to comply, we find that Parker has

failed to show an abuse of discretion in denying the second motion for a continuance for the same purpose. In addition, Parker must also make a showing of prejudice, *Finch v. State*, 262 Ark. 313, 556 S.W.2d 434 (1977), which he has also failed to do.

Affirmed.

HART and ROBBINS, JJ., agree.