

Cite as 2010 Ark. App. 563

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR09-1330

TAURUS SANDERS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 1, 2010APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2005-433A]HONORABLE JOHN FOGLEMAN,
JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Taurus Sanders appeals from the trial court's revocation of his probation. On appeal, appellant argues that the State failed to produce sufficient evidence to support the revocation. We affirm the judgment of the trial court.

In 2005, appellant pled guilty to a charge of first-degree battery and received sixty months' probation. Among the conditions of appellant's probation was the requirement that he refrain from violating any state, federal, or municipal law. Appellant was also required to report to his probation officer as directed. On February 19, 2008, the State filed a petition to revoke appellant's probation. In the petition, the State alleged numerous grounds in support of revocation, among which were allegations that appellant committed the offenses of breaking or entering and theft and that appellant failed to report to his probation officer as directed.

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At the revocation hearing, Michael German, a probation officer who was assigned appellant's case on November 28, 2007, testified that appellant last reported to him on December 17, 2007. German stated that he wrote appellant two letters and called him several times to remind him to report. German testified that after appellant was arrested on new charges on January 11, 2008, he told appellant that his probation would be revoked, but German denied telling appellant that he no longer had to report.

John Henry Bennett testified that, after rehearsal for a church concert, he washed his vehicle at a car wash and went home, where he parked the vehicle in the driveway. The next morning, Bennett's mother woke him and told him that the car had been broken into. According to Bennett, the top of the car was "busted" and a window was broken. The stereo system, a keyboard, and a sustain pedal were taken from the vehicle. Bennett testified that he did not see appellant the day the car was broken into. Officer Jimmy Evans with the West Memphis Police Department testified that he lifted fingerprints from the driver's side, passenger's side, and rear of the vehicle. The State introduced a crime lab report stating that a latent fingerprint found on the vehicle belonged to appellant. Ernest Gilcrest testified that he pled guilty to breaking into Bennett's car and taking the items that were stolen. Gilcrest stated that he was alone when he broke into the car.

Following the evidence, the trial court found that appellant violated the terms and conditions of his probation by failing to report to his probation officer as directed and committing the offenses of breaking or entering and theft of property. In a judgment and

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commitment order entered on June 25, 2009, the trial court sentenced appellant to 120 months' imprisonment. Appellant filed a timely notice of appeal on July 15, 2009.

Appellant's sole point on appeal is a challenge to the sufficiency of the evidence to support the revocation. A sentence of probation or a suspended sentence may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). The State needs only to show that the appellant committed one violation to sustain a revocation. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We give great deference to the trial court in determining the preponderance of the evidence because the trial judge is in a superior position to determine the credibility of witnesses and to determine the weight to be given to their testimony. *Id.* We will not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Williams, supra.*

Appellant argues that the trial court erred in revoking his probation based on failure to report to his probation officer as directed because he only missed three appointments and there was no evidence that his failure to report was willful. Appellant's argument is not well taken. The number of appointments appellant missed is irrelevant. There was no provision in the terms of appellant's probation allowing him to miss a certain number of appointments before his probation could be revoked. The terms and conditions of appellant's probation stated that he was required to see his probation officer as directed; appellant admits in his brief

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that he failed to do so on at least three occasions, despite being reminded by his probation officer in writing and by telephone. Once the State has introduced evidence of a violation of a defendant's terms and conditions of probation, the burden of going forward shifts to the defendant to offer some reasonable excuse for his or her failure to comply. See *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). Here, appellant offered no explanation for his failure to report to his probation officer. The trial court did not err by revoking appellant's probation based upon his failure to report to his probation officer. Because the State is only required to prove one violation of the terms and conditions of a defendant's probation in order to support a revocation of that probation, it is not necessary for us to consider appellant's arguments regarding the trial court's finding that he violated the terms and conditions of his probation by committing the offenses of breaking or entering and theft of property.

Affirmed.

PITTMAN and HART, JJ., agree.