

Cite as 2010 Ark. App. 752

**ARKANSAS COURT OF APPEALS**DIVISION III  
No. CACR10-501

DAVID JUAREZ

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** November 10, 2010APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. CR07-1190]HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED

**ROBERT J. GLADWIN, Judge**

On February 8, 2010, the Sebastian County Circuit Court revoked appellant David Juarez's suspended sentence, sentencing him to ten years' imprisonment. Juarez contends that the State failed to prove by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence. We affirm the revocation.

Juarez was given a suspended sentence after having been convicted of possession of drug paraphernalia, second-offense possession of marijuana,, and maintaining a drug premises.<sup>1</sup> He was later convicted of first-degree terroristic threatening<sup>2</sup> and first-degree criminal

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<sup>1</sup>*State v. Juarez*, Sebastian County Circuit Court, CR2007-1190A.

<sup>2</sup>*State v. Juarez*, Sebastian County Circuit Court, CR2008-281.

Cite as 2010 Ark. App. 752

mischievous.<sup>3</sup> His suspended sentence had been conditioned on his paying fines, fees, and attending two Narcotics Anonymous or Alcoholics Anonymous meetings per week. He later received three years' imprisonment plus a seven-year suspended sentence on the criminal-mischief charge and was ordered to pay restitution and fees. Juarez was paroled on May 26, 2009.

In December 2009, a petition to revoke Juarez's suspended sentence was filed alleging that he had committed the offenses of carrying a weapon, fleeing apprehension, driving with a suspended license, careless driving, and not wearing a seatbelt. The petition also alleged that Juarez had failed to pay fines, costs, and restitution in the above-referenced cases. The revocation petition was amended to add residential burglary to the listed offenses.

A hearing was held on February 3, 2010, wherein Officer Chad Cullen of the Fort Smith Police Department testified that he answered a burglary and unauthorized-use-of-a-vehicle report. He saw the vehicle and followed it. When he confirmed that the vehicle was the one reported, he turned on his lights, and the vehicle fled. When the vehicle was stopped, Officer Cullen arrested Juarez, who was driving the vehicle, and charged him with fleeing, unauthorized use of a motor vehicle, and driving with a suspended driver's license. After being Mirandized, Juarez denied any involvement in the burglary. Officer Roger Gordon of the Fort Smith Police Department testified that Juarez was carrying a box cutter when he was arrested. Juarez told Officer Gordon that he had it in case anyone wanted to fight with him.

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<sup>3</sup>*State v. Juarez*, Sebastian County Circuit Court, CR2008-881.

Cite as 2010 Ark. App. 752

Juarez admitted to Officer Brian McKinney that he had kicked in his neighbor's door because he was looking for a person to "kick [their] ass."

The trial court revoked Juarez's suspended sentence and sentenced him to ten years' imprisonment in the Arkansas Department of Correction.<sup>4</sup> A notice of appeal was timely filed, and this appeal followed.

In revocation proceedings, the burden is on the State to prove a violation of a condition by a preponderance of the evidence. *Dooly v. State*, 2010 Ark. App. 591, \_\_\_ S.W.3d \_\_\_. The State's burden of proof in a revocation proceeding is less than that required to convict in a criminal trial, and thus evidence that is insufficient for a conviction may be sufficient for a revocation. *Id.* In order to revoke a suspended sentence, the State need only prove one violation. *Id.* When the sufficiency of the evidence is challenged on appeal, we will not reverse a trial court's decision to revoke unless its findings are clearly against the preponderance of the evidence. *Id.* Because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the superior position of the trial court to decide these matters. *Id.* When a party appealing from a revocation leaves an alternate, independent ground for the revocation unchallenged, the circuit court's ruling must be affirmed. *E.g., May v. State*, 2009 Ark. App. 608.

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<sup>4</sup>Juarez's suspended sentence was revoked in *State v. Juarez*, Sebastian County Circuit Court, CR2007-1190(A), but was not revoked in the other cases.

Cite as 2010 Ark. App. 752

Juarez contends that the State was required to show that his failure to pay fines, costs, and restitution was willful. He claims that this lack of proof is fatal to the State's case. He also challenges the charges made by the State that he fled and committed burglary. Finally, he argues that the trial court erred in not requiring the State to produce the recording in which he allegedly confessed. However, the State correctly points out that the trial court found by a preponderance of the evidence that Juarez violated the terms of his suspended sentence by carrying a weapon. Because he fails to challenge the sufficiency of that alternate, independent ground for revocation, this court must affirm the circuit court's decision to revoke his suspended sentence. *See May, supra*. Accordingly, we affirm.

Affirmed.

PITTMAN and KINARD, JJ., agree.