

Cite as 2010 Ark. App. 822

ARKANSAS COURT OF APPEALSDIVISION III
No. CACR10-734

ADRIAN MAXWELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 8, 2010APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. CR2008-1475]HONORABLE DAVID REYNOLDS,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Adrian Maxwell entered a guilty plea to theft by receiving on March 19, 2009, and was sentenced to four years' probation. As a condition of his probation, he agreed to "not violate any local, state, or federal laws." On February 25, 2010, the State filed a petition for probation revocation, alleging that Maxwell had violated Arkansas law. A "Worksheet for Revocation" filed with the court alleged that Maxwell had committed felony theft by receiving, misdemeanor fleeing, and misdemeanor resisting arrest arising from an incident that occurred on February 23, 2010, in North Little Rock.

At the revocation hearing on April 20, 2010, the State, in addition to the aforementioned violations, sought to introduce evidence that Maxwell had violated his

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probation by committing theft of property and fleeing in Pine Bluff in 2009.¹ Defense counsel objected to the introduction of these crimes, asserting that he had not been placed on notice that these crimes were going to be argued as grounds for revocation. The State responded by stating that Maxwell had been placed on notice at the April 8, 2010 bond hearing that the grounds for revocation would include the Pine Bluff charges. The trial court agreed and allowed the State to present evidence of those crimes as well.

At the conclusion of the hearing, the trial court stated:

I'm going to find that [Maxwell] has violated the conditions of his probation, first, by being arrested, and second, by having arrests and not reporting it to his probation officer. The arrest itself is not a key point; it's the facts behind the arrests and those have been proven to my satisfaction by a preponderance of the evidence.

Maxwell appeals the trial court's order of revocation claiming that (1) the trial court erred when it allowed the State to introduce evidence of crimes not alleged in the revocation petition at the revocation hearing; (2) the trial court allowed inadmissible hearsay testimony to be introduced in contravention of the Confrontation Clause; and (3) there was insufficient evidence presented to support revocation.

A sentence of probation 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

¹ The State also introduced evidence that Maxwell violated his probation by failing to report his arrests to his probation officer as required as a condition of his probation. Although this violation was not alleged in the revocation petition, Maxwell does not argue on appeal that this evidence was improper.

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probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2009); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002). The State need only 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.*

Here, the trial court erred in revoking Maxwell's probation on the basis that he had committed violations of Arkansas law arising out of an incident in Pine Bluff. These grounds were not alleged in the petition for revocation and the evidence in the record does not conclusively establish that appropriate notice was given to the defendant that the State was going to rely on these grounds to support revocation. In *Hawkins v. State*, 251 Ark. 955, 475 S.W.2d 887 (1972), the Arkansas Supreme Court held that such a procedure was "fundamentally unfair" because a defendant cannot properly prepare for a revocation hearing without knowing in advance what charges of misconduct would serve as the basis for the proposed revocation.

Such error, however, does not automatically mandate a reversal. In addition to evidence of the violations discussed above, the State presented evidence that Maxwell had committed the crimes of felony theft by receiving, misdemeanor fleeing, and misdemeanor resisting arrest as alleged in the petition. We will affirm a trial court's revocation even if only

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one ground for revocation is supported by the evidence. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

Officer Scott Miller testified that, on February 23, 2010, he stopped a silver Jeep Cherokee for fictitious tags. He testified that the driver of the vehicle was a bald, black male wearing a hoodie-type jacket. Nobody else was in the vehicle. When Officer Miller exited his vehicle and approached the Jeep, the Jeep took off. Officer Miller reentered his vehicle and pursued the Jeep. He discovered the Jeep abandoned, and several witnesses pointed out the direction the driver had fled. Officer Miller pursued the individual on foot until he saw the suspect. He then returned to his vehicle and drove to a house around the corner where he observed a black male, who was later identified as Maxwell, standing on a porch talking. When he approached Maxwell, Maxwell appeared to be out of breath. Officer Miller attempted to place Maxwell under arrest, but Maxwell jerked his arm away, jumped off the porch, and attempted to flee. The keys to the abandoned Jeep were found in Maxwell's pocket when he was taken into custody. Officer Miller testified that he later confirmed that the silver Jeep had been reported stolen out of Conway. Based on these facts, there was sufficient evidence presented that Maxwell had violated Arkansas law and had, likewise, violated the conditions of his probation. Under these facts, revocation was appropriate.

Maxwell's remaining argument alleges that the trial court erred in admitting hearsay evidence in violation of the Confrontation Clause. This evidence was admitted to support the State's allegations that Maxwell committed crimes in Pine Bluff in violation of his

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conditions of probation. As there was sufficient evidence to support revocation on the North Little Rock charges without any reliance on the allegedly inadmissible hearsay evidence, the error, if any, was harmless.

Since the State only needed to show that Maxwell committed one violation to sustain a revocation, and as there was sufficient evidence in the record to support the violation alleged in the revocation petition, we affirm.

ROBBINS and KINARD, JJ., agree.