

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CACR 05-1130

APRIL 12, 2006

MARK MOORE

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
PULASKI COUNTY
[NO. CR 2001-2182]

V.

HONORABLE JOHN LANGSTON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Mark Moore appeals from a petition revoking his probation, arguing that there was insufficient evidence that he inexcusably failed to comply with the condition of his extended probation that he pay restitution to the victims. We affirm.

On September 28, 2001, appellant pled guilty to a Class A misdemeanor charge of writing checks for which he did not have sufficient funds to pay. A judgment and disposition order was entered October 2, 2001, placing appellant on probation for twelve months, fining him fifty dollars, and ordering him to pay \$1,309.95 in restitution at a rate of \$150 a month beginning November 1, 2001. Appellant was given written notice of the conditions of his probation.

The State filed a petition on February 19, 2003, seeking revocation of appellant's probation for failure to pay restitution. Appellant pled guilty, and on August 26, 2003, a judgment and disposition order was entered extending appellant's probation twelve months, and ordering him to pay \$1,309.95 in restitution at the rate of \$150 per month. Once again, appellant received written notice of the conditions of his probation. The State filed a second

petition to revoke appellant's probation on April 13, 2004. Although appellant originally agreed to plead guilty, he changed his mind during the hearing on June 1, 2005, because the State declined to waive the requirement that he pay restitution to the victims. After appellant informed the court of his decision to withdraw his guilty plea, the court conducted a hearing on the merits of the State's petition to revoke.

Officer Deborah Green testified that she is appellant's probation officer and that she met with appellant to discuss the extension of his probation. She advised appellant to pay the restitution, and she gave him coupons and envelopes in which to mail his payments. Officer Green testified that, during this meeting with appellant, he told her that he was not going to pay the restitution, and although she encouraged him to comply with the written rules of his probation and to pay the restitution, appellant did not pay any restitution. After the testimony from Officer Green, the State rested. The defense did not question Officer Green, call any witnesses, or introduce any evidence. The court found that appellant had violated the terms of his probation by failing to pay restitution, and a pre-sentencing report was ordered. Appellant was subsequently sentenced to 253 days in the county jail, and he was given credit for the 253 days he served prior to the sentencing hearing.

On review, we uphold the trial court's findings unless those findings are clearly against the preponderance of the evidence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). Appellant does not dispute the finding that he failed to pay restitution, rather appellant asserts that after so proving, the State had the burden of proving that he was financially able to pay restitution. Appellant argues that, because he lacked the financial means to pay restitution, he did not inexcusably violate the condition of his extended probation that required him to pay. The State has the burden of proving that the failure to pay restitution was inexcusable, but once the State has introduced evidence of nonpayment,

the defendant has the burden of presenting some reasonable excuse for his failure to pay. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). In this case, once the State presented evidence of nonpayment, the appellant did not offer any evidence at all. Because he offered no evidence to justify his failure to pay, the State's proof was sufficient to justify revocation of appellant's extended probation.

Affirmed.

GLADWIN and VAUGHT, JJ., agree.