

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION I

CACR05-762

January 24, 2007

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[CR200-233 I]

JOHN EDWIN GARVER

APPELLANT

HONORABLE JOHN HOMER  
WRIGHT, CIRCUIT JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED; MOTION TO BE  
RELIEVED GRANTED

In September 2003, appellant, John Garver, pleaded guilty to the offense of failure to appear, a Class C felony, in Garland County case CR2003-233. His plea in that case was part of a negotiated settlement that also involved two other cases. For purposes of this appeal, we are concerned only with the revocation in case number CR2003-233. As part of the original plea, appellant was placed on supervised probation for a period of five years subject to certain designated conditions, including that he was not to commit a criminal offense punishable by imprisonment and that he was not to use, sell, distribute, or possess any controlled substance. On November 1, 2004, appellant's probation officer filed a violation report, alleging that appellant had violated the above two conditions of

his probation in that he was found to be in possession of a controlled substance and to have possessed or used drug paraphernalia. On November 12, 2004, the State filed a petition to show cause why appellant's probation should not be revoked. Following a hearing, the trial court determined that appellant had violated the conditions of his probation and therefore revoked it. As part of his sentence, appellant was fined \$100 and sentenced to twenty-four months in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel filed a motion to withdraw on the ground that this appeal is wholly without merit. This type of motion must be accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal, including all motions, objections, and requests decided adversely to appellant, and a statement of reasons why none of those rulings would be a meritorious ground for reversal. Appellant's counsel did not fully satisfy those requirements with the original brief and was therefore ordered to file a complying brief, which has now been done. Appellant was provided with a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days, but he has not done so. Appellant's counsel addresses the three adverse rulings in this case, and explains why they would not serve as meritorious grounds for reversal. We agree.

Specifically, the three adverse rulings addressed by counsel are 1) the denial of appellant's motion to suppress the testimony of Deputy Mike Thomas, 2) the overruling of appellant's objection to his probation officer's testimony regarding statements made by

appellant, and 3) the revocation itself. We agree that none of these rulings would provide a meritorious ground for reversal.

We first address the sufficiency of the evidence to support the revocation. Even though appellant did not challenge the sufficiency of the evidence at the revocation hearing, it was not necessary to do so in order to preserve the issue for appeal. *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004). Consequently, appellant's counsel was correct in addressing the issue, and we agree that there was sufficient evidence to support the revocation.

In testing the sufficiency of the evidence to support a revocation, we do not reverse the trial court's decision unless its findings are clearly against the preponderance of the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). In making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). The State only has to show that appellant committed one violation of the conditions of his probation in order to support a revocation. *Morgan v. State*, 73 Ark. App. 107, 42 S.W.3d 569 (2001).

Here, the conditions of appellant's probation included that he was not to commit a criminal offense punishable by imprisonment, and that he was not to use, sell, distribute, or possess any controlled substance. There was evidence presented at the revocation hearing that appellant admitted to his probation officer that he would fail a drug test and

that the arresting officer found appellant in possession of marijuana and drug paraphernalia. The State satisfied its burden of proving that appellant violated the conditions of his probation.

The second adverse ruling was the trial court's denial of appellant's motion to suppress the testimony of Deputy Mike Thomas, who arrested appellant during his probation. The arrest led to the revocation proceedings. Thomas found appellant asleep in a church parking lot and conducted a welfare check. A check of appellant's identification revealed a felony warrant out of Saline County, for which Thomas arrested appellant. A subsequent search incident to arrest and an inventory search revealed marijuana and items of drug paraphernalia. Appellant sought to suppress Thomas's testimony because "there's no proceedings over there that are taking place in this case, and Mr. Garver would be entitled to a hearing on any matters there, as to sufficiency of the evidence." The trial court denied the motion, pointing out that the issue is "whether his activity has violated the conditions of his probation. It doesn't have to be that charges are filed or that he's in fact convicted of those charges. If they can prove that criminal acts were committed, that's all that's required for violation of the probation here." The trial court was correct, and this adverse ruling would provide no meritorious ground for reversal.

The third and final adverse ruling was the trial court's overruling of appellant's objection to his probation officer testifying about statements that appellant made to him because appellant had not been given his Miranda warnings. Appellant spoke with his

probation officer, Eric Clendening, after being arrested. During conversations at the jail and subsequently in Clendening's office, appellant told Clendening that he had smoked marijuana, that he was an "old pothead," and that he would not pass a drug test. Such statements obtained by a probation officer are generally admissible in revocation proceedings. *See Fitzpatrick v. State*, 7 Ark. App. 246, 647 S.W.2d 480 (1983). Under the circumstances of this case, we agree that the trial court did not err in allowing this testimony.

Based upon our review of the record and the brief presented to this court, we conclude that there has been full compliance with Rule 4-3(j) and that the appeal is without merit. Accordingly, appellant's judgment of conviction upon revocation is affirmed, and counsel's motion to be relieved is granted.

Affirmed. Counsel's motion to be relieved is granted.

ROBBINS and VAUGHT, JJ., agree.