DIVISION III

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

CACR05-845

May 31, 2006

APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT
[CR 03-804]

JEROME HATTON
APPELLANT

V.

HONORABLE C. DAVID BURNETT, CIRCUIT JUDGE

AFFIRMED

STATE OF ARKANSAS
APPELLEE

Jerome Hatton pleaded guilty on March 4, 2004, to possession of a controlled substance (marijuana) with intent to deliver and was placed on probation for a period of eight years. Conditions of his probation included, among other things, not violating any state, federal, or municipal law; paying a fine, court costs, and probation fees; not using or possessing any alcohol, illegal drug, or controlled substance; submitting to drug testing; and reporting to his probation officer. On February 16, 2005, the State filed a petition to revoke Hatton's probation, alleging that he had failed to pay fines, costs, and fees; failed to report to his probation officer; failed to pay probation fees; failed to notify the sheriff and his probation officer of his current address and employment; had committed domestic battery; had possessed a firearm as a felon; had possessed and used marijuana; and had possessed and used cocaine. After a hearing, the trial court revoked Hatton's probation and sentenced him to ten years in the Arkansas Department of Correction. Hatton now appeals, arguing that the State did not present sufficient evidence to support the revocation of his probation. We affirm the revocation.

In *Richardson v. State*, 85 Ark. App. 347, 350, 157 S.W.3d 536, 538 (2004) (citations omitted), we again set forth our well-settled standard of review for cases involving probation revocation:

> To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position.

At the revocation hearing, Deborah Wiseman, an employee of the Crittenden County Sheriff's Department, testified that Hatton had paid a total of $385 toward his fine and costs. She said that he had been ordered to pay seventy-five dollars per month, and that he should have paid $900 as of the date of the hearing.

April Wilson, a probation officer with the Department of Community Punishment, testified that she was assigned to supervise Hatton; that his intake was performed on March 8, 2004; that she and Hatton discussed the terms of his probation at that time; and that he agreed to the terms. Wilson said that Hatton reported from April to November 2004, that he did not report in December 2004 and January 2005, but that he did report in February 2005. Wilson testified that Hatton tested positive for cocaine and marijuana on March 25, 2004, and again on January 24, 2005. Wilson also said that Hatton was $50 behind in payment of his probation fees.

Alvin Honeycutt, an employee of the Hughes Police Department, testified that he responded to a call from the Maywood Apartments and that when he arrived, he found Connie Doolittle with a head wound. Honeycutt said that Doolittle identified Hatton as the person who hit her over the head, that she completed an affidavit to that effect, that the police department got a warrant for Hatton's arrest, and that Hatton turned himself in at the police department. Honeycutt said that he did not know if Hatton was the person who struck Doolittle.

Connie Doolittle testified that she was hit in the head in front of her apartment, but that she did not know who hit her. She said that she signed an affidavit stating that Hatton was the person who hit her, but she did not know why she thought that it was him.

The State rested, the defense called no witnesses, and the trial court found that Hatton had violated the terms and conditions of his probation. Specifically, the trial court found that Hatton had failed to pay his fines, costs, and probation fees; had failed to report to his probation officer; and had tested positive on at least two occasions for marijuana and cocaine. Additionally, the trial judge stated that he was convinced beyond a probability that Hatton did commit an assault on Doolittle.

On appeal, Hatton focuses mainly on the assault on Doolittle, arguing that there was no evidence that Hatton was the person who battered Doolittle. In support of this argument, he points to Doolittle's testimony that she did not know who hit her. Furthermore, Hatton argues that he reported late in January 2005, so he only really missed one meeting with his probation officer. He also argues that there was no evidence that the drug tests were sent to a lab to be verified. The last two of these arguments are being

made for the first time on appeal; therefore, we are unable to address them. Nevertheless, if we were to address them, we would not find such arguments to be meritorious.

Even assuming that the assault on Doolittle cannot be a basis for revocation of Hatton's probation, the trial court did not err in revoking Hatton's probation. The State only has to prove one violation of the conditions of probation. In this case, there is undisputed evidence that Hatton was not current on payment of his fine, costs, or probation fees; that he had missed at least one meeting with his probation officer; and that he had tested positive for both cocaine and marijuana. Any of these violations is sufficient to support the revocation of Hatton's probation, and the trial court did not err in finding by a preponderance of the evidence that Hatton had violated the conditions of his probation.

Affirmed.

NEAL and ROAF, JJ., agree.