

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA CR 06-1415

September 26, 2007

GLEN MCDANIEL

APPELLANT

APPEAL FROM THE CLARK COUNTY
CIRCUIT COURT
[NO. CR-2005-110]

V.

HONORABLE JOHN THOMAS,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Glen McDaniel was found guilty of violating the conditions of his probation and sentenced to ten years' imprisonment. On appeal, he argues that, considering his efforts to comply and his reasonable excuses for non-compliance, the trial court's decision to revoke his probation was clearly against the preponderance of the evidence. We find no error in the trial court's ruling and affirm.

In an order filed December 19, 2005, appellant pled guilty to the offense of theft by receiving and was given a sentence of sixty months' probation. On March 30, 2006, the State filed a motion to revoke probation, citing several violations, including failure to report as directed, failure to pay restitution, fines, and costs, and failure to perform community service. Appellant admitted these violations at a hearing held on May 1, 2006, and the trial court

continued appellant's probation under the same terms and conditions and also included two additional terms: (1) appellant was ordered to complete an additional fifty hours of community service; (2) appellant was ordered to remain employed at Scroll Technology during the probation period. An order memorializing this decision was filed on June 27, 2006.

On July 26, 2006, the State again filed a motion to revoke appellant's probation, citing the following violations: (1) failure to report as directed; (2) failure to pay supervision fees; (3) failure to pay restitution, fines, and costs; (4) failure to perform community service; (5) failure to submit urine specimen as requested; (5) failure to maintain employment at Scroll. A hearing on the matter was held on September 11, 2006, and the State offered the testimony of appellant's probation officer, Casey Jackson. Ms. Jackson testified that appellant had missed two scheduled appointments with her, on May 3 and June 14, 2006; appellant had not completed the hours of community service that had been ordered; appellant had not paid any money towards his restitution, fines, and costs; and appellant had refused to provide a urine specimen for drug testing upon request on June 23, 2006.

Appellant also testified and admitted he had missed the appointments on May 3 and June 14; however, he explained that he was seeking employment on those days. Appellant testified that he had gone to Scroll Technologies on May 2 to begin employment but his position had been filled, which was why he was seeking employment elsewhere. Appellant also testified that according to his calculations, he had completed either 252 or 372 hours of community service, but he had no paperwork that would verify his community service hours. Appellant also admitted he had not paid any of his fees, costs, or restitution, citing his

continued unemployment as the reason.

The trial court found appellant guilty on the following grounds: (1) failure to report as directed, (2) failure to remain employed, (3) failure to provide a drug test specimen, (4) failure to perform community service. In an order filed September 20, 2006, appellant was sentenced to ten years in the Arkansas Department of Correction. Appellant filed a timely notice of appeal to this court on October 10, 2006.

In a revocation proceeding, the State must prove its case by a preponderance of the evidence, and on appellate review, we do not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Anglin v. State*, 98 Ark. App. 34, ___ S.W.3d ___ (2007). The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions. *Harris v. State*, 98 Ark. App. 264, ___ S.W.3d ___ (2007). When appealing a revocation, the appellant has the burden of showing that the trial court's findings are against the preponderance of the evidence. *Shaw v. State*, 65 Ark. App. 186, 986 S.W.2d 129 (1999).

On appeal, appellant does not dispute the violations of his probation but instead argues that he made “bona fide attempts to comply, and offered reasonable excuses ... for his failure to comply with probation rules.” For example, appellant argues that because he called his probation officer after the missed appointments and explained why he missed them, “it was not like he was completely ignoring her, or absconding.” However, it is apparent from the trial court’s ruling that he did not find appellant’s explanations for his violations credible. And in our review on appeal, we defer to the superior position of the trial court to determine

questions of credibility and the weight to be given to the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). Accordingly, we find the trial court's decision to revoke probation was not clearly against the preponderance of the evidence and affirm.

Affirmed.

GLOVER and VAUGHT, JJ., agree.