

DIVISION II

CACR06-1423

October 31, 2007

ROBERT L. WANN

APPELLANT
932-C]

AN APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT [CR-05-

v.

HON. J. MICHAEL FITZHUGH, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Robert L. Wann appeals the revocation of his suspended imposition of sentence on an underlying charge of breaking or entering, a Class D felony. The conditions of Wann's suspended sentence required that he pay a \$750 fine (including a \$250 DNA fee) and \$150 in court costs at the rate of fifty dollars a month. Wann argues that the State failed to show that he violated the conditions of his suspended sentence. We affirm.

The State petitioned to revoke Wann's suspended sentence on February 23, 2006, alleging, among other things, that Wann violated the conditions of his suspension by failing to pay court-ordered fines, costs, and DNA fees. A suspended sentence may be revoked at any time prior to the expiration of the period of suspension when the court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Williams v. State*, 351

Ark. 229, 91 S.W.3d 68 (2002). This court will not reverse a trial court's decision to revoke unless it is clearly against the preponderance of the evidence. *Id.* 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. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Indeed, the State need only show that the appellant committed one violation in order to sustain a revocation. *Id.*

Where the alleged violation is a failure to make court-ordered payments, the State has the burden of proving by a preponderance of the evidence that the failure to pay was inexcusable. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). Once the State has introduced evidence of non-payment, the burden shifts to the defendant to offer some reasonable excuse for his failure to pay. *Id.*

At his April 19, 2006 revocation hearing, Wann admitted that he failed to make the court-ordered payments. He testified, however, that on two separate occasions, he gave his fine money to his girlfriend and that the money was stolen from her. He further testified that he was trying to get the money to pay his fines and that he had contacted his attorney to ask whether he could work off his fines. The trial court held that Wann violated his suspended sentence and sentenced him to three years in prison and a three-year suspended sentence upon release from prison.

The ruling of the trial court is affirmed because it did not err in revoking Wann's suspended sentence. We reviewed the record to reach this opinion because Wann's brief was

deficient, in that his addendum contained neither the original terms and conditions of his suspension nor the revocation petition. *See Lewis v. State*, 84 Ark. App. 327, 139 S.W.3d 810 (2004)(holding that the appellate court may review the record to affirm).

By his own admission, Wann failed to pay court-ordered fines. Although he offered reasons as to why he failed to pay his fines, the trial court weighed the evidence and apparently determined that Wann's testimony was not credible. The trial court is better positioned than we are to determine the credibility of witnesses and therefore, we find no error.

Affirmed.

HART and GLOVER, JJ., agree.