

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CACR06-1491

June 13, 2007

GEORGE CLIFFORD SWAN
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

AN APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[CR-05-626-4]

HONORABLE THOMAS LYNN WILLIAMS,
JUDGE

AFFIRMED

Following a show-cause hearing, the Garland County Circuit Court found that appellant George Swan violated the terms of his probation by failing to report. The trial court revoked Swan's probation and sentenced him to serve ten years in the Arkansas Department of Correction. On appeal, Swan argues that the trial court abused its discretion when it revoked his probation and sentenced him to serve ten years in the Arkansas Department of Correction. We affirm.

In order 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. *Harris v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Apr. 4, 2007). The State bears the burden of proof but need only prove that the defendant committed one

violation of the conditions. *Id.* The State's burden is not as great in a revocation hearing; therefore, evidence that is insufficient for a criminal conviction may be sufficient for revocation. *See Bedford v. State*, 96 Ark. App. 38, ___ S.W.3d ___ (2006). Because 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. *Haley v. State*, 96 Ark. App. 256, ___ S.W.3d ___ (2006).

During the show-cause hearing, the trial court heard the following evidence. Mandy Harper, a probation/parole officer with the Department of Community Corrections, testified that according to Swan's records he was told to report on March 3, 2006, at 9:00 a.m. Swan admitted that he failed to report on March 3. He said that he thought he was supposed to report on March 10 but later learned that it was March 3.

As stated above all the State needed to prove was one violation. *Harris, supra.* The State showed that Swan failed to report, and that was sufficient to sustain the revocation of Swan's probation. Accordingly, we hold that the decision to revoke Swan's probation was not clearly against the preponderance of the evidence and we affirm.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.