

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

CACR06-162

OCTOBER 11, 2006

JARON BALL

APPELLANT

AN APPEAL FROM THE PULASKI

COUNTY CIRCUIT COURT [CR03-3179 and
CR04-3790]

v.

STATE OF ARKANSAS

APPELLEE

HONORABLE TIMOTHY FOX, JUDGE

AFFIRMED

The Pulaski County Circuit Court found appellant Jaron Ball in violation of his probation in cases CR 03-3179 and CR 04-3790. According to the State, appellant was in violation of his probation in case CR 03-3179 due to his failure to report, failure to pay supervision fees, and failure to complete fifty (50) hours of community service; appellant was in violation of his probation in case CR 04-3790 due to his failure to report, failure to pay supervision fees, and failure to pay restitution. As a result, the court revoked appellant's probation and sentenced him to two concurrent five-year-terms in the Arkansas Department of Correction (ADC). The appellant argues on appeal that the trial court erred by revoking his probation. We affirm.

On January 13, 2004, in case CR 03-3179, appellant pled guilty to the charges of theft

by receiving and fleeing. In the January 16, 2004, judgment and disposition order, appellant was sentenced to five (5) years probation, ordered to pay \$500 in fines plus court cost, and was also ordered to perform fifty (50) hours of community service within five (5) months. On June 11, 2004, the State filed a petition to revoke appellant's probation. The petition stated that appellant had violated the terms of his probation in that he had not reported to his probation officer; had failed to pay supervision fees; and had failed to complete fifty hours of community service. Appellant pled guilty to the probation violation on August 16, 2004. In the September 2004 judgment and commitment order, appellant was fined \$250, was ordered to pay outstanding fines, fees, and court cost; ordered to complete the fifty hours of community service within five months; and sentenced to five years probation.

On March 14, 2005, in case CR 04-3790, appellant pled guilty to theft by receiving. In the March 21, 2005, judgment and commitment order, appellant was sentenced to five years probation, fined \$100 plus court cost, and was ordered to pay \$1,759.83 restitution at the rate of fifty dollars a month beginning April 1.

On August 19, 2005, the State filed petitions to revoke appellant's probation in cases CR 03-3179 and CR 04-3790. According to the State, appellant violated the terms of his probation in CR 03-3179 in that he failed to report (last reported on May 20, 2005); failed to pay supervision fees (\$425 owed); and failed to complete fifty hours of community service. The State alleged that appellant violated the terms of his probation in CR 04-3790 in that he failed to report (last reported on May 20, 2005); he failed to pay supervision fees

(\$425 owed); and he failed to pay restitution (\$1,759.83 still owed). In both cases, appellant had signed documentation indicating he had received the conditions of his release on probation and that he understood what the conditions meant.

The revocation hearing for both cases took place on October 28, 2005. Darrell Sanders, appellant's probation officer, testified he was assigned to be appellant's probation officer and that, although appellant received the rules of probation from another probation officer in March, he went over the rules again with appellant in April and appellant signed the document at that time. Sanders stated that appellant had not fulfilled his conditions of probation because he had not paid supervision fees, had not paid restitution, had not completed his community service, and had not reported since May 20, 2005. Sanders stated that he attempted to contact appellant by calling appellant's home and the homes of appellant's relatives, and that in March 2005 and July 2005, he had mailed two letters to appellant at "2804 Peyton Street, Little Rock, AR, 72204," which had not come back to him. Sanders further testified that when appellant reported in May, he was given a drug test; however, appellant did not make any payments and told Sanders that he was not "making enough money to pay his fees." According to Sanders, appellant said nothing about his mother being ill.

Appellant's mother, Ruby Lee Richardson, testified that appellant was living with her from May through September; that no mail was received at 2804 Peyton from the probation office; that she had problems getting her mail; that she had not spoken to the probation

officer on the telephone until October; that she did not know whether or not appellant had reported to his probation officer from June to September; that she knew appellant reported in May because she took him; that she did not take appellant to report in June because she had surgery; that she was unable to drive until around September; that appellant could not get a job because he was caring for her while she was down; that appellant could not report because she could not drive him; that she did not know anyone who could have taken appellant to report; and that she did not ask anyone else to take appellant to report. She also stated that she badly needed appellant's help because she did not have anyone to help her.

Upon hearing the evidence, the trial court granted the State's petitions and sentenced appellant to five years in the ADC for each case with the sentences to run concurrent with each other. This appeal followed.

On appeal, appellant argues that the trial court erred in granting the State's petitions to revoke his probation in each of the two cases because the State failed to introduce substantial evidence that he had *inexcusably* failed to comply with the terms and conditions of probation in each case.

A trial court may revoke a defendant's probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2005). In probation-revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation

petition, by a preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). This court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Gillion v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 11, 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. *Turner v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 11, 2006). The State need only show that the appellant committed one violation in order to sustain a revocation. *Gillion, supra*. Where the alleged violation of the conditions of probation is a failure to make payments as ordered, 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) (emphasis added). Once the State has introduced evidence of non-payment, the burden of going forward shifts to the defendant to offer some reasonable excuse for his/her failure to pay. *Id.*

In the case at hand, the testimony evidenced that appellant had not reported, had failed to complete community service or to pay his fees and restitution. Once the State had proven non-payment of fees and restitution the burden of going forward shifted to appellant to offer some reasonable excuse for his failure to pay, which he was unable to satisfy. *Id.* Since any one of these violations was sufficient for the trial court to revoke appellant's probation, we affirm.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.