

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

DIVISION 1

CACR06-200

September 20, 2006

STACY WATKINS
APPELLANT

AN APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT [CR 04-1825]

v.

HONORABLE JOHN LANGSTON, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

The Pulaski County Circuit Court found appellant Stacy Watkins in violation of her probation. According to the judgment and commitment order entered on November 1, 2005, appellant was in willful violation of the terms of her probation due to her failure to report and failure to pay restitution. As a result, the appellant's probation was revoked and she was sentenced to three years in the Arkansas Department of Correction, with one year suspended. The appellant argues on appeal that the trial court erred by revoking her probation. We affirm.

On June 3, 2004, the appellant pled guilty to forgery and was sentenced to three years probation, \$300 fine and court cost, and \$245 restitution at the rate of \$50 a month. Appellant signed the probation document whereby she acknowledged receiving and understanding the document. The probation document stated that appellant was to report monthly to the probation office, and pay a \$25 supervision fee each month for thirty-five (35) months, beginning July 2004.

It also contained the following language “YOU MUST REPORT EVEN IF UNABLE TO PAY MONIES OWED.”

On November 30, 2004, the State filed a petition to revoke appellant’s probation. The petition stated that appellant had violated the terms of her probation in that she had not reported to her probation officer; she had failed to pay the victim’s \$245 restitution; and she had failed to pay the \$125 supervision fees owed at the time.

The revocation hearing took place on June 20, 2005. Patrick Hallum, assistant area manager with the Department of Community Corrections, Adult Probation, testified. According to Mr. Hallum, the court sentenced appellant to three years probation; appellant read the terms and conditions of her probation and signed that she understood those terms; and appellant violated the terms of her probation by failing to report, failing to pay supervision fees, and failing to pay restitution.

Appellant testified on her own behalf at the hearing. She stated that she was placed on probation because of a forgery charge; that her probation was for three years; that she had a \$300 fine and court cost; that she was responsible for restitution; that she was unemployed at the time she signed the rules of probation; that she had been unable to obtain employment due to this felony; that she had no education; and that she did not have any access to money. According to appellant, she was afraid to report to her probation officer because she was afraid she would be locked up for not having the money. Appellant even stated, “I intentionally failed to report, but I wanted to pay the money, I just didn’t have a way.”

Upon hearing the evidence, the trial court found the appellant guilty of probation violation by failing to pay restitution and failing to report. On October 14, 2005, a sentencing hearing was

held. At this hearing, appellant requested another chance at probation stating that she had three small children, two of which had birth defects. The trial court refused appellant's request for probation and sentenced her to three years in the Arkansas Department of Correction with one year suspended. The trial court entered the judgement and commitment order against the appellant on November 1, 2005. This appeal followed.

On appeal, the appellant argues that the trial court erred in granting the State's petition to revoke her probation because the State failed to prove by a preponderance of the evidence that she had inexcusably violated the conditions of her probation requiring her to pay restitution and fees and to report to her probation officer.

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/her probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2005). In probation-revocation proceedings, the State has the burden of proving that the appellant violated the terms of his/her 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*.

In the present case, appellant testified that she had not paid any of her fees; that she had not

reported to her probation officer since she was placed on probation; that this failure to report was intentional; and that the payment of fees and reporting to her probation officer were both conditions of her probation. By appellant's own admission, she inexcusably violated the terms of her probation. Since any one violation could sustain a probation violation, the trial court's decision to revoke the appellant's probation and sentence her to incarceration was not clearly against the preponderance of the evidence. Therefore, we affirm.

Affirmed.

VAUGHT, J., agrees.

HART, J., concurs.