

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR07-1098

May 14, 2008

CRAIG D. THOMAS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[CR-2004-1074, CR-2006-377]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

This is an appeal from the revocation of a suspended imposition of sentence. On appeal, appellant, Craig Thomas, argues that the trial court erred in finding that he violated the terms and conditions of his suspended imposition of sentence. We affirm the revocation.

In December 2004, Thomas pleaded guilty to possession of drug paraphernalia in case number CR04-1074, was given a five-year suspended imposition of sentence, and was ordered to pay a \$300 fine and \$150 in court costs at the rate of \$50 per month beginning February 3, 2005. In June 2006, Thomas pleaded guilty in case number CR06-377 to breaking or entering. He was sentenced to three years in prison, with an additional three-year suspended imposition of sentence, and he was ordered to make full restitution,

as well as pay \$100 to the public-defender fund. The terms and conditions of both suspended impositions of sentence included following all laws and paying fines and restitution as ordered.

On June 18, 2007, the State filed a petition to revoke in both cases, alleging that Thomas had committed the offense of theft by receiving on April 19, 2007; the offense of theft of property on April 24, 2007; and the offenses of fleeing and criminal trespass on June 14, 2007. The petition further alleged that as of June 18, 2007, Thomas had failed to pay his fines and court costs in CR04-1074, and that he had also failed to pay his public-defender fee and restitution in CR06-377.

At the hearing on the petition to revoke, testimony revealed that in the latter part of April 2007, Thomas went to an apartment occupied by Pedro Tovar and his girlfriend, Angela Singleton, looking for one of his friends and asking for a place to stay. Although Thomas was a stranger, Tovar agreed to let him stay in the apartment. During the three days Thomas stayed with Tovar and Singleton, he left during the afternoon between the hours of 3:30 to 9:30 p.m., telling Tovar that he had a job. On the night of April 24, Tovar and Singleton went to bed around 10:00 or 10:30, leaving Thomas in the living room; when they awoke the following morning, their 15-inch color television, DVD player, a blanket, radio, some jewelry, and approximately twenty-three DVDs, including some military DVDs, were missing. Thomas was also gone.

Tovar and Singleton reported the theft to the Fort Smith Police Department, and they both selected Thomas from a photographic line-up. The detective who investigated

the theft developed Thomas as a suspect after she got several “hits” for similar items that had recently been pawned on April 28 at a Fort Smith pawn shop, and the pawn ticket had Thomas’s name, address, social-security number, and date of birth on it. The DVD player pawned by Thomas matched the description Tovar had given of the one that was stolen from them, including the brand name and the model number, although Tovar was never asked to view the pawned DVD player to see if he could identify it.

The State also presented at the hearing, without objection, district-court judgments showing that Thomas had pleaded guilty on June 18, 2007, to the offenses of fleeing and criminal trespass, as well as copies of the fines ledgers showing that Thomas still had outstanding balances due in both CR04-1074 and CR06-377.

At the close of the hearing, the trial court found that Thomas had violated the terms of his suspended sentence by incurring new convictions in district court; by failing to pay his fines, costs, and restitution; and that a preponderance of the evidence indicated that he had committed the offense of theft of property. The trial court then revoked Thomas’s suspended sentences and sentenced him to five years in prison with an additional five-year suspended imposition of sentence in CR04-1074, and to an additional three-year suspended imposition of sentence in CR06-377. Thomas now appeals, arguing that there was no evidence that the items he pawned were the items taken from the apartment; that the trial court erred in using uncounseled district-court judgments to revoke his suspended imposition of sentences; and that the State failed to show that he willfully failed to pay his fines, court costs, and restitution.

A trial court may revoke a defendant's suspended sentence at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his suspended sentence. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In a hearing to revoke, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the trial court's findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* The appellate courts defer to the trial court's superior position to determine credibility and the weight to be accorded testimony. *Id.* In order to revoke a suspended sentence, the State need only prove one violation. *Id.*

A person commits the offense of theft of property if he knowingly "takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property." Ark. Code Ann. § 5-36-103(a)(1) (Supp. 2007). Thomas argues that there was no evidence presented to the trial court to show that the items he pawned were in fact the items taken from Tovar and Singleton.

We hold that the trial court correctly found that Thomas had committed theft of property in violation of his suspended sentences. In this case, the evidence showed that Tovar's and Singleton's property disappeared from their apartment at the same time Thomas did, and a few days later, Thomas pawned a DVD player that was the same brand and model number as the one taken from the apartment. This violation is sufficient to

support the revocation of Thomas's suspended sentences, and it is not necessary to address Thomas's other arguments, as the State need only prove one violation to support a revocation.

Affirmed.

GRIFFEN and HEFFLEY, JJ., agree.