

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR07-1297

RHONDA S. ANDERSON,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered MAY 21, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. G-CR-2006-71]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE,

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Rhonda S. Anderson's suspended imposition of sentence for non-support was revoked by order filed September 10, 2007, in Sebastian County Circuit Court, and she was sentenced to one-year imprisonment in the Arkansas Department of Correction with an additional nine-years' imprisonment suspended. The sole issue on appeal is whether the trial court's finding that she violated the terms and conditions of her suspended sentence was clearly against the preponderance of the evidence. We affirm.

Appellant pled guilty on January 16, 2007, to failure to pay child support and received a suspended sentence. On February 27, 2007, the State filed a petition to revoke appellant's suspended sentence based upon her failure to pay support of \$120 every two weeks toward the arrearage of her child support obligation and her failure to pay regular support as previously ordered, which were conditions of her suspended sentence. At the hearing held

August 29, 2007, on the petition to revoke, appellant testified she had been given a second chance when she received a suspended sentence in January 2007. She claimed she sent in three payments in February 2007, but they were returned to her. She stated she gave that money directly to her daughter. Further, she testified she had not made any payments since the May 2007 payment that was credited to her, and that she did not have an excuse for not paying. Appellant admitted she could have done better and that she had been negligent in paying.

The trial court found by appellant's admission that the State proved by a preponderance of the evidence appellant violated the terms of her suspended sentence. The trial court specifically found appellant's actions were willful and sentenced her to the Arkansas Department of Correction for a period of one year, with an additional term of nine-years' incarceration suspended. Appellant filed a timely notice of appeal, and this appeal followed.

In *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001), this court set forth our standard of review in cases involving the revocation of a suspended imposition of sentence as follows:

In a revocation proceeding the burden is on the State to prove the violation of a condition of the suspension by a preponderance of the evidence. Ark. Code Ann. § 5-4-309 (Supp.1999). On appeal, the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Lemons v. State*, 310 Ark. 381, 836 S.W.2d 861 (1992). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. See *Lemons v. State*, 310 Ark. at 383. Since 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. *Lemons, supra; Hoffman v. State*, 289 Ark. 184, 711 S.W.2d 151 (1986). Circumstantial evidence may be sufficient to warrant revocation. See *Needham v. State*, 270 Ark. 131, 603 S.W.2d 412 (Ark. App.1980).

Id. at 247, 45 S.W.3d at 870-71. The State need only prove that the appellant committed one violation of the conditions of her suspended imposition of sentence in order for appellant's suspended sentence to be revoked. *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001); *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998).

Appellant argues that she explained to the trial court why she had not paid the support as ordered. She testified at the trial-court hearing that she was told to make support payments in the basement of the Sebastian County courthouse. When she tried to do so, she was told to send the payments to Little Rock. Appellant claimed the payments she sent to Little Rock were sent back to her, except for the May payment she received credit for paying. She also testified she took the money from the returned payments and gave it directly to her daughter. Appellant explained to the trial court she had to travel from Waldron to Forth Smith for her employment and had to pay for the vehicle, insurance, her house payment, and utilities. She asserted at the hearing that she was able to make payments. Therefore, she claims her failure to pay was not willful and that the trial court failed to consider her argument.

Where there is no determination that the failure to pay restitution is willful, it is clear a probationer cannot be punished by imprisonment solely because of a failure to pay. *Jordan v. State*, 327 Ark. 117, 939 S.W.2d 255 (1997). Appellant argues the State did not show her failure to pay was willful, despite her admission that her failure was negligent. She asserts the evidence submitted by the State was not sufficient to show that a preponderance has been met.

The State contends the trial court did not err by finding that it proved by a

preponderance of the evidence appellant willfully violated the terms of her suspended sentence. We agree. The evidence presented consisted of records from the child support enforcement office in Little Rock showing that she made no payments between January 22, 2007, and February 27, 2007, which was the date the petition to revoke was filed. There was a payment posted in May 2007, but that payment is outside the period covered in the petition to revoke. Appellant admitted she knew the trial court had given her a second chance at the proceeding in January 2007, and she testified that she could make the payments and had no excuse for not doing so. Because she did not provide a reasonable excuse for her failure to pay, it was not against the preponderance of the evidence for the trial court to find her failure to pay was willful. Accordingly, we affirm.

Affirmed.

MARSHALL, J., agrees.

HART, J., concurs.