

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA CR 07-131

ARMANDO CERVANTES

October 10, 2007

APPELLANT

APPEAL FROM THE SCOTT COUNTY  
CIRCUIT COURT  
[NO. CR-2005-10]

V.

STATE OF ARKANSAS

HONORABLE PAUL EDWARD  
DANIELSON, JUDGE

APPELLEE

AFFIRMED

In a judgment and disposition order filed July 12, 2005, Armando Cervantes, appellant, pled guilty to possession of a controlled substance, methamphetamine, and was given a sentence of 120 days in jail and five years' probation. On August 21, 2006, the State filed a petition to revoke appellant's probation based on new criminal charges pending against him, namely residential burglary and aggravated assault. At the probation revocation hearing held November 7, 2006, the court did not find that appellant had committed either residential burglary or aggravated assault, but instead revoked appellant's probation on the ground that he had drunk alcohol in violation of the terms of his probation. On appeal, appellant argues that revoking his probation on this ground, which was not enumerated in the State's petition to

revoke, violated his due process rights. We find that appellant's argument is not preserved for our review and therefore affirm.

At the revocation hearing, appellant, who speaks only limited English, testified through an interpreter regarding the events that led to his arrest on July 29, 2006, on charges of residential burglary and aggravated assault. Essentially, appellant claimed he was acting in self-defense when he took two knives from an acquaintance's house and assaulted two men who had been beating him. Appellant also admitted that he had drunk two beers that evening. In its ruling from the bench, the court indicated that the facts were not clear enough to find appellant guilty of the burglary or assault charges, but appellant had admitted he drank alcohol, a violation of his conditions of probation, so the court revoked his probation on that ground.

On appeal, appellant does not argue that the trial court's finding was in error, but instead argues that because he was given no notice of alcohol consumption as a possible ground for revocation in the State's petition to revoke, he had no opportunity to prepare a defense, thus violating his due process rights. While appellant is correct that due process requires that he be given notice of the conditions of probation he was alleged to have violated, it is also true that the denial of any right, even a constitutional one, must be objected to at trial to be preserved for appeal. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003).

Appellant argues that while he was asked by the State if he consumed alcohol, the evidence of consumption was only relevant to whether he was guilty of burglary and assault charges, and "defense counsel was reasonable in presuming that the admissible evidence

elicited by the prosecution would be used by the trial judge only for the permissible purpose of deciding the questions properly before the court regarding the conditions enumerated in the Petition to Revoke.” Appellant also contends that he had no opportunity to make a specific objection regarding alcohol consumption being considered as a ground for revocation; however, a review of the record reveals the following questions asked by the court during the State’s cross-examination of appellant:

BY THE COURT: Well, let me ask. Did you understand that you were on probation for the drug charges last year?

BY APPELLANT: Yes.

BY THE COURT: Did you understand that [as] one of your conditions of probation you were not supposed to be drinking?

BY APPELLANT: Yes.

It is clear from the above questions that the court had identified alcohol consumption as a separate ground for revocation and was clarifying appellant’s understanding of the terms of his probation with regard to drinking. Thus, appellant was on notice that alcohol consumption was being considered by the court as a violation of probation, but appellant made no objection to the court’s consideration of that violation or the fact that it was not listed as a ground for revocation in the State’s petition to revoke. Nor did appellant raise any objection after the trial court announced its ruling from the bench, specifically naming the consumption of alcohol as the basis for revocation. When an issue is not brought to the attention of the trial

court, we do not consider it on appeal because the trial court had no opportunity to rule on the issue. *Cheshire, supra*.

Appellant also contends that his motions for directed verdict, made at the close of the State's case and the close of all the evidence, preserved his due process issue for appeal. While appellant did make motions for directed verdict, the motions were based solely on the insufficiency of the evidence with regard to the burglary and assault charges and made no mention of his lack of notice of alcohol consumption as a basis for revocation. We therefore find that appellant's argument is not preserved for our review and affirm. We note, however, that the trial court's decision to revoke appellant's probation solely on a ground not enumerated in the petition to revoke was improper, and had the argument been properly preserved, this court would reverse.

Affirmed.

GLOVER and VAUGHT, JJ., agree.