

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
ROBERT J. GLADWIN, JUDGE

DIVISION III

CACR07-321

DECEMBER 12, 2007

RONALD LEE MISHION
APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-2005-488/2005-857]

V.

HON. NORMAN WILKINSON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Ronald Lee Mishion appeals the revocation of his suspended sentence by the August 24, 2006 order of the Sebastian County Circuit Court. On appeal, Mishion contends that the State failed to prove by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence and that the trial court erred in allowing certain testimony, which Mishion claims denied him his constitutional right to confront the witnesses against him. We affirm.

Mishion pled guilty to one count of aggravated assault, a Class D felony, on September 19, 2005, for which he was given a sixty-month suspended imposition of sentence. One condition of his suspended sentence was the requirement of good behavior.

On February 14, 2006, Mishion pled guilty to second-degree sexual assault, a Class B felony, for which he was given a 120-month suspended imposition of sentence. One condition of that sentence was that he not violate any federal, state, or municipal law.

On March 17, 2006, the State filed a petition to revoke Mishion's suspended sentences. The petition alleged that he had failed to comply with the rules and regulations of the probation office by failing to report and by failing to cooperate and comply with the conditions of the Department of Community Correction Sex Offender Program. Before the petition could be heard, it was amended on June 2, 2006, to include three allegations of rape committed in Oklahoma during the months of February and March 2006.

At the revocation hearing, witnesses for the State included Detective Sampson of the Fort Smith Police, who testified that he had arrested Mishion at the parole officer's office on a charge of failure to register as a sex offender¹; a crime analyst for the Stillwater, Oklahoma Police Department, who testified that based on conversations she had with Mishion, he had violated the sex-offender-registration law in Oklahoma by moving to Oklahoma City and then to Arkansas without informing her; and Mishion's parole officer, who testified that Mishion failed to report to her on March 9, 2006, as she had instructed him to do, and that when he did report on March 16, 2006, he was arrested. She claimed that

¹Detective Sampson testified that he was made aware after the arrest that Mishion had registered as a sex offender in open court when he pled guilty to the second-degree sexual assault charge in February 2006.

Mishion never attended any of the counseling that he was required to do and that he was made aware that it was a violation to be around minors.

Because the child victim was not present to testify against Mishion, the trial court ruled that witnesses could not testify about the rape-crime allegations in Oklahoma without violating Mishion's right to confront his accusers, but could testify as to Mishion's confession regarding those crimes "if you can convince me by a preponderance of the evidence on what you have referred to as his confession that he violated the terms of his suspended sentence." The State was allowed to examine Michael Williams, an Oklahoma City police officer, who testified that he did not interview the child victim due to her young age, and that anyone under thirteen-years old would be interviewed by hospital personnel. Detective Sampson also testified that Mishion told him he had had sex with the young lady who had made the allegations against him. Sampson stated that Mishion explained that he was watching the young lady and a friend of hers in almost a baby-sitting capacity. The mother left and that is when Mishion claims that the intercourse with the young lady took place. Mishion indicated to Sampson that he had sex three times with the young lady, and he claims that it was consensual.

The circuit court found, based on Mishion's confession to the rapes, that he violated the terms of his suspended sentences by engaging in sex with a twelve-year-old. The court also revoked his suspended sentences for failing to properly register as a sex offender in both Oklahoma and Arkansas. Mishion was sentenced to a term of ten years with an additional ten years' suspended imposition of sentence for the violations. This appeal follows.

In *Jones v. State*, 355 Ark. 630, 633, 144 S.W.3d 254, 255-56 (2004), our supreme court explained:

We note at the outset our well-settled law regarding revocation of probation or suspended sentence. To revoke probation or a suspended sentence, the burden is on the State to prove the violation of a condition of the probation or suspended sentence by a preponderance of the evidence. Ark. Code Ann. § 5-4-309(d) (Supp. 2003). *See also Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002); *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). On appellate review, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or suspended sentence. *Id.* Thus, the burden on the State is not as great in a revocation hearing. *Id.* Furthermore, because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Id.*

Patterson v. State, ___ Ark. App. ___ S.W.3d ___ (May 30, 2007).

Mishion contends that the State failed to show by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence. He argues that it was alleged that he failed to do his counseling, but there was no testimony that counseling sessions had been established at the time of his arrest. He claims that this is important because he was arrested on March 16, which is less than thirty days after he pled and was sentenced on the charge. He further argues that he was informed by his parole officer of the rules on March 3, 2006, and the allegations of the contact with the alleged minor all occurred before that date. He claims that he did register as a sex offender at the time of his plea in open court, and he registered in Oklahoma as a sex offender on February 23, 2006. Therefore, he contends that the evidence is not sufficient to compel a reasonable mind to reach a conclusion one way or another without resting on conjecture.

However, we hold that the State proved by a preponderance of the evidence that Mishion inexcusably failed to comply with the written terms and conditions of his suspended sentence. In order to revoke a suspended sentence, the State need only prove one violation. *E.g., Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). Mishion registered as a sex offender in Stillwater, Oklahoma, on February 23, 2006. He subsequently moved to Oklahoma City, Oklahoma, and then back to Ft. Smith, Arkansas, between February 23, 2006, and March 15, 2006. He did not notify the Stillwater police of either of the moves as required by Oklahoma law.² By failing to properly register, Mishion violated the terms and conditions of his suspended sentences. Because the State need only prove one violation of the terms and conditions of the suspended sentences, this court declines to address Mishion's other arguments.

Affirmed.

HART and GRIFFEN, JJ., agree.

²Oklahoma law requires an offender to register with both the Oklahoma Department of Correction and local law enforcement no less than three days prior to abandoning or moving from the address of the previous registration. *See Okla. Stat. tit. 57, § 57-583(B)(3)* (2006).