NOT DESIGNATED FOR PUBLICATION
DIVISION I

ARKANSAS COURT OF APPEALS

No. CACR07-354

WILLARD J. HARRIS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** OCTOBER 31, 2007 APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT, [NO. CR2004-305, CR2004-673, CR2004-674] HON. NORMAN WILKINSON, JUDGE AFFIRMED

SAM BIRD, Judge

Appellant Willard J. Harris pleaded guilty to seven drug-related charges in the Sebastian County Circuit Court on December 22, 2004. He was given a sentence of twenty years' imprisonment, with ten years imposed and suspended imposition of the remaining ten years. He was paroled from the imposed sentence on May 19, 2005, and on July 26, 2006 the State filed a petition to revoke the suspended sentence and the remainder of the paroled portion of the imposed sentence. At the conclusion of a revocation hearing, conducted on September 27, 2006, the trial court granted the revocation of the suspended imposition of sentence. The court entered its judgment and commitment order on October 5, 2006.

Harris's suspended imposition of sentence included the condition that he not violate any federal, state, or municipal law, and the trial court revoked his petition on this basis. Harris now raises one point on appeal, contending that the State presented insufficient proof that he committed new offenses.

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Harris v. State*, 98 Ark. App. 264, ___ S.W.3d ___ (2007). However, the trial court's findings will be upheld on appeal unless they are clearly against the preponderance of the evidence; because a 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. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Haley v. State*, 96 Ark. App. 256, ___ S.W.3d ___ (2006).

It is not necessary for the State to prove literal physical possession of drugs in order to prove possession. *Dodson v. State*, 341 Ark. 41, 14 S.W.3d 489 (2000). Possession need not be actual, physical possession but may be constructive, when one controls a substance or has the right to control it. *Osborne v. State*, 278 Ark. 45, 643 S.W.2d 251 (1982). Where contraband is discovered in jointly occupied premises, however, and there is no direct evidence that it belongs to a particular occupant, some additional factor must be present linking the accused to the contraband. *Hodge v. State*, 303 Ark. 375, 797 S.W.2d 432 (1990).

The State alleged in its petition that Harris had committed the offenses of possession of drug paraphernalia and possession of methamphetamine with intent to deliver, and that he had failed to pay a public defender fee of $100.00. The circuit court found at the conclusion of the hearing that Harris's failure to pay was not a reason for revocation, but it found by

"even more" than a preponderance of the evidence that Harris had violated terms and conditions of his suspended imposition.

Harris's parole officer, Eric Manus, testified that at 10:00 p.m. on July 18, 2006, he and another officer made a home visit to Harris's residence because of eight positive drug screenings for Harris since June 2005. A man who came to the locked screen door when Manus knocked "hollered into the living room area that . . . the police were at the door." Harris could see that individuals were moving inside the home and the divided living room. When Harris came to the door seconds later and allowed the officers to enter, Manus saw three other individuals sitting in the second living room area. They moved and switched chairs several times, with a female and a male other than Harris occupying a recliner at different times.

Manus told Harris that he was conducting a parole search of the residence because of the numerous positive drug screenings. Manus found on the living room recliner a small baggy that contained what later tested to be methamphetamine, and he found blue bags on the floor and around the coffee table. Inside one blue bag were lighters, a gray sealant, butane fuel, and a clear glass pipe. Another bag contained more butane fuel, a Camo scale, numerous small clear baggies, lighters, Zigzag rolling papers, a pill bottle containing various pills, and a small, round piece of glass. Manus testified that small baggies indicate the sale of narcotics, Zigzag papers indicate the smoking of marijuana, digital scales are used for measuring narcotics for sale, and round, clear glass is used to separate narcotics. Manus tested Harris for drugs at the county jail the next day. The tests were positive for methamphetamine and marijuana,

and Harris said that he knew of drug activity at his home and that "they had been using methamphetamine" earlier in the night before Manus got there.

Manus had also searched Harris's home about a month before the July search. Manus testified that in the earlier search he had located "one of those bags" and had found different types of drug paraphernalia that were "used for selling." Harris told Manus that a nephew was staying in the home at the time of the earlier search. Harris testified that the nephew was not there during the search and that Harris was the only person in the home at the search's conclusion.

We hold that the evidence was sufficient to prove that Harris violated the conditions of his suspended sentence. There was evidence that he tested positive for drugs numerous times before his home was searched in July 2006, that he admitted the use of drugs in his home that evening, that he tested positive for marijuana and methamphetamine the next day, and that drug paraphernalia were found in the July search and a previous one. This evidence is sufficient proof that Harris constructively possessed drug paraphernalia; therefore, the trial court's finding that Harris violated the terms and conditions of his suspended sentence is not clearly against the preponderance of the evidence.

Affirmed.

GLADWIN and HEFFLEY, JJ., agree.