

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

DIVISION IV

CA CR 07-51

September 12, 2007

JEFFERY J. JOHNSON, JR.

APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY
[NO. CR2004-824]

V.

STATE OF ARKANSAS

APPELLEE

HONORABLE JOHN W. LANGSTON,
JUDGE

AFFIRMED

Appellant Jeffery Johnson appeals the revocation of his probation. His only argument is that the trial court's decision is clearly against the preponderance of the evidence. We disagree and affirm.

On November 15, 2004, appellant pled guilty to theft of property, a class C felony, and he was placed on probation for three years. In May 2005, the State filed a petition to revoke his probation. Appellant pled guilty and was placed on probation for another three years. The present petition to revoke was filed on June 20, 2006. It was alleged in this petition that appellant had failed to abide by the terms and conditions of his probation by failing to report to his probation officer since October 4, 2005, by not paying restitution, and by testing positive for marijuana usage.

The revocation hearing was held on September 5, 2006. Although the parties presented evidence of appellant's failed drug test and the delinquency in his restitution payments, the trial court revoked appellant's probation based on a finding that he had inexcusably failed to report to his

probation officer. On this subject, Orville Thomas testified that he had become appellant's probation officer in May 2006. Thomas said that on May 17 he called appellant at the last reported telephone number and left a message for appellant to call and schedule an appointment. Appellant, however, never returned his phone call. Thomas further testified that his predecessors had attempted without success to contact appellant on four previous occasions. Appellant testified that Tamika Jones and then Nicholas Stewart had been his probation officers, and that Mr. Stewart had advised him that Mr. Thomas was to be his new probation officer. Appellant stated that he had called Thomas a lot of times and left messages at the probation office using the telephone number he had been given by Stewart.

A trial court may revoke a defendant's probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2005). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley v. State*, 96 Ark. App. 256, ___ S.W.3d ___ (2006). We uphold the trial court's findings unless those findings are clearly against the preponderance of the evidence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). 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 court's superior position. *Haley v. State, supra*.

Appellant argues that his failure to report was excusable because he was assigned three different probation officers and because he attempted to contact them at various intervals. Appellant's testimony, however, demonstrates that he always knew who his probation officer was, and the trial court was not obliged to believe his testimony that he made any effort to contact them. On this record, we are not able to say that the trial court's decision is clearly against the

preponderance of the evidence, and we affirm.

Affirmed.

BIRD and MARSHALL, JJ., agree.