

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
KAREN R. BAKER, JUDGE

DIVISION III

CACR07-712

FEBRUARY 27, 2008

CRAIG DEPRIEST

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SALINE COUNTY  
CIRCUIT COURT  
[NO. CR2005-655-2]

HONORABLE GARY M. ARNOLD,  
CIRCUIT JUDGE

AFFIRMED

This appeal arises from appellant Craig DePriest's violation of the terms of his probation, entered after appellant's plea of guilty to the offense of felony non-support, he received a sentence of 96 months with a twelve-year suspended imposition of sentence that would allow the trial court to impose that sentence after his release if he continued to fail to provide support. On appeal he asserts two points of error: (1) The trial court erred in finding that he violated the terms of his probation; (2) The trial court erred by not exercising its discretion. Sufficient evidence supports the trial court's finding that appellant inexcusably failed to provide support. Appellant's second point is not preserved for appeal. Accordingly, we affirm.

In revocation proceedings, the State must prove by a preponderance of the evidence that the defendant violated a court-ordered condition of his probation. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). Where the sufficiency of the evidence is challenged on appeal from an

order of revocation, this court will not reverse the circuit court's decision unless its findings are clearly against the preponderance of the evidence. *Id.* Furthermore, this court defers to the superior position of the circuit court to determine questions of credibility and the weight to be given to the evidence. *Id.*

On July 24, 2006, the Saline County Circuit Court accepted appellant's plea of guilty to the offense of felony non-support. Appellant was assessed court costs of \$150, required to submit to a DNA test and pay the \$250 fee for that test, was fined one dollar, and placed on thirteen years' supervised probation. Additionally, he was ordered to pay \$199.13 each month toward his total child-support arrearage of \$31,065, and to timely make the weekly payments of \$120, as he had agreed to in an earlier proceeding.

On September 20, 2006, the State petitioned to revoke his probation based upon his failure to make any payments toward his child support obligations and for failure to report to his probation officer after his intake interview with Linda Jagers on July 24, 2006. Jagers testified that she had specifically discussed with appellant that he was required to pay the amount of \$199.13 monthly toward the arrearage and that this amount was in addition to his weekly payment obligations. Terry Dailey, with the Office of Child Support Enforcement, testified that appellant had made no payments subsequent to his conviction, and that the additional arrearage during the July to September time period was approximately \$1,000.

Appellant testified that he had not made any payments because he had not worked and that he had reported by telephone to his probation officer because he did not have a driver's license due to his conviction for non-support. He also stated that he was trying to find a job and that he lived far away from the probation office and could not drive or walk there. He also asserted that he was currently working making decent money and had agreed prior to the revocation hearing that he

would be able to pay \$5,000 toward the arrearage within sixty days. He explained that his new employer was generously loaning him money toward that sum.

Although appellant asked the court to excuse his failure to pay support upon his not working and not having a license, he provided no evidence of employment applications, rejections, or reasons for those rejections. He offered no testimony supporting his general assertion that the lack of a driver's license prevented his employment. He presented no evidence that he could not work because of illness or other reasonable circumstance. Based upon the evidence presented, the trial court ruled that appellant had violated the conditions of his probation by failing to pay as ordered, both against the arrearage and current obligations, as of the date of the petition. Based upon the evidence, we find no error in the trial court's finding that appellant had violated a condition of his probation and affirm.

Appellant also argues that the circuit court erred by not exercising its discretion at sentencing, alleging that the court's comments made at the start of the hearing showed that the court arbitrarily rejected probation as an option before the revocation hearing began. His argument is not preserved for appellate review. Arguments may not be raised on appeal, even constitutional ones, that were not first brought to the attention of the trial court. *Thomas v. State*, 370 Ark. 70, \_\_\_ S.W.3d \_\_\_ (2007). Appellant did not raise any objection to the court's statements at the time they were made. Accordingly, the challenge is not preserved.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.