

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR07-937

May 21, 2008

CHRIS ALAN WARD

APPELLANT

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[CR-2001-800-2]

V.

STATE OF ARKANSAS

APPELLEE

HON. DAVID CLINGER, JUDGE

AFFIRMED

Appellant Chris Allen Ward appeals the trial court's revocation of his suspended sentences. He contends that the decision is not supported by a preponderance of the evidence. We affirm.

On September 4, 2001, the State filed an information charging Ward with conspiracy to commit second-degree forgery. Thereafter, on March 28, 2002, the State filed an amended information adding the charge of breaking or entering. Ward pled guilty to these charges on July 9, 2002. He received a four-year suspended sentence for each charge (to run concurrently) and was ordered to pay restitution in the total amount of \$1200, along with court costs and fines.

On November 22, 2002, the State filed a petition and later an amended petition to revoke Ward's suspended sentences alleging Ward failed to report to his probation officer,

failed to pay costs and fees, failed to report change of address, admitted to recent marijuana use, had contact with the police, failed to report contact with the police, possessed drug paraphernalia, and associated with persons engaged in criminal activity.<sup>1</sup> Second and third amended petitions to revoke were filed on June 19, 2003, reasserting the prior allegations and adding several new ones, including recent use of methamphetamine.

On August 1, 2003, following a revocation hearing, a judgment and commitment order was entered, sentencing Ward to two years' imprisonment and a suspended sentence of four years for the conspiracy charge. He received the same sentence for the breaking-or-entering charge. This order also included the disposition of the possession-of-drug-paraphernalia charge. The prison sentences for all three charges were to run concurrently. This order further reflects that Ward was to pay the restitution balance, court costs, and fines.

On February 24, 2006, the State filed another petition to revoke all of Ward's suspended sentences, alleging that Ward failed to pay fines, fees, and costs. Almost one year later, on February 13, 2007, the State filed another petition to revoke Ward's suspended sentences, again alleging that Ward failed to pay fines, fees and costs. Revocation hearings were held on February 12 and 14, 2007. The State introduced a certified copy of the payment

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<sup>1</sup>Regarding the allegation of possession of drug paraphernalia, the record does not contain an information charging that crime. However, after reviewing the other pleadings in the record, it appears that Ward was charged with possession of drug paraphernalia with the intent to manufacture methamphetamine. On August 1, 2003, Ward pled guilty to the lesser charge of possession of drug paraphernalia, and a plea agreement and order was entered on that charge, sentencing him to two years' imprisonment and an eight-year suspended sentence. He was also ordered to complete a drug treatment program and pay costs, fees, and fines.

ledger showing that Ward owed a balance in fines, fees, court costs, and restitution. The State argued that Ward only made nine payments in the past five years.

Ward testified that he believed he had made more payments than the ledger showed. He claimed that he stopped making payments in August 2006 because he broke his arm. After he returned to work from that injury, he did not make payments because he had to pay bills and child support. He testified that he has not made any payments as of December 12 or 13, 2006, because he had been incarcerated since that time. He admitted to the trial court that he did not contact his attorney or the court in the past five years to ask for an extension or explain his financial difficulties.

The trial court found that Ward violated the terms of his suspended sentences by failing to pay restitution to his victims. Except during the time when Ward broke his arm, the trial court found his nonpayment was wilful, revoked his suspended sentence, and sentenced him to a suspended sentence of six years on each of the conspiracy and breaking-or-entering charges, to run concurrently. He also received a sentence of ten years' imprisonment on the possession-of-drug-paraphernalia charge. He was further ordered to pay court costs, fines, fees, and restitution in the amount of \$2595. Ward's sole point on appeal is that the trial court erred in finding that the State proved by a preponderance of the evidence that he violated the terms of his suspended sentence.

In a revocation hearing, the State must prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). To revoke a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably

violated a condition of that suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley, supra*. Where the sufficiency of the evidence is challenged on appeal from an order of revocation, we will not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004). In making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Id.*

Ward argues that the evidence was insufficient to revoke his suspended sentences because the State failed to present any witness testimony. He specifically argues:

Normally in probation revocation hearings there would be a probation officer that will take the witness stand and testify. In this case there was no one from the State that testified. The operative word is testimony. There was none.

He further argues that the State failed to call an authenticating witness to verify that the contents of the ledger were correct.

Ward has not preserved these specific arguments for review. Ward did not object to the introduction of the certified copy of the payment ledger into evidence. To the contrary, he stated that he had no objection. Also, Ward never argued at any time below that the State failed to meet its burden because it failed to present any witness testimony. It is well settled that an appellant may not change the grounds for objection on appeal but is limited by the scope and nature of his objections and arguments presented at trial. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). Moreover, we cannot consider arguments raised for the first time on appeal. *Hill v. State*, 341 Ark. 211, 16 S.W.3d 539 (2000).

Ward's general challenge to the sufficiency of the evidence is without merit because a preponderance of evidence supports the trial court's revocation. First, Ward testified that he did not make timely payments. And while he offered several excuses as to why he did not make all of his payments, the trial court did not have to believe him. *See Champlin v. State*, 98 Ark. App. 305, \_\_\_ S.W.3d \_\_\_ (2007) (holding that the trier of fact is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial). Second, the State offered into evidence a certified copy of the payment ledger that confirmed Ward's failure to pay fines, fees, costs, and restitution. Ward contended that he made more payments than the ledger showed; however, he failed to offer any proof to support that contention and the trial court did not have to believe him. *Haley, supra*. Accordingly, we hold that the trial court's revocation of Ward's suspended sentence is not clearly against the preponderance of the evidence.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.