

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR08-145

June 4, 2008

JOHN M. SILVEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[CR-2006-119-G]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

This is an appeal from the revocation of a suspended imposition of sentence. Appellant, John Silvey, argues that the trial court erred in finding that the State had proved that he had violated the terms and conditions of his suspended imposition of sentence by a preponderance of the evidence. We affirm the revocation.

On March 7, 2007, Silvey pleaded guilty to the offense of sexual indecency with a child, a Class D felony, in Sebastian County case CR2006-119. He was given a five-year suspended imposition of sentence; fined \$750 and ordered to pay \$150 in court costs, payable at \$55 per month beginning on April 1, 2007, as well as being assessed a \$100 fee for the public-defender fund; ordered to register as a sex offender; and ordered to have no

contact with the victim. Some of the other conditions of his suspended sentence included no violation of any federal, state, or municipal laws, and obtaining employment.

On July 31, 2007, the State filed a petition to revoke Silvey's suspended sentence, alleging that he had committed the offenses of criminal trespass, public sexual indecency, contributing to the delinquency of a minor, and fleeing. The State also asserted that Silvey had failed to pay his public-defender fee, his fine, and his court costs.

At the beginning of the hearing on the petition to revoke, the State introduced into evidence, over Silvey's objection, the fines and costs ledger pertaining to Silvey's payments, or lack thereof, in case 2006-119. Mark Fisher, a park ranger at Ben Geren Park, testified that a little after 11 p.m. on July 25, 2007, after the park had closed and he had locked the first gate to the park, Silvey and a female companion sneaked into the park through the second gate. After Fisher locked the second gate, he saw a green Volkswagen with its lights on sitting in the parking lot of the hiking and biking trails. He pulled up to investigate, and when he got about a foot from the vehicle, Fisher saw a white male, later identified as Silvey, pop up out of the back seat. Fisher testified that both Silvey and the female were naked, and that Silvey was lying on top of the female; however, Fisher did not see any act of sexual intercourse, deviate sexual activity, or sexual activity. Fisher asked both parties to get dressed; Silvey got dressed first and Fisher ascertained his identity and the fact that he was a registered child sex offender. Fisher obtained consent to search the vehicle, which was registered to the female's parents, and while Fisher was searching the vehicle, Silvey fled on foot. When Fisher ran her driver's license, he learned that the

female with Silvey was seventeen, although she was just a few days shy of her eighteenth birthday.

At the close of the hearing, the trial court found by a preponderance of the evidence that Silvey had violated the terms of his suspended sentence in that he had committed criminal trespass, public sexual indecency, and fleeing, and had contributed to the delinquency of a minor. The trial court also stated that it wanted the record to show that Silvey had clearly failed to make his payments. Silvey was sentenced to two years' incarceration, with an additional four-year suspended imposition of sentence.

A trial court may revoke a defendant's suspended sentence at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his suspended sentence. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In a hearing to revoke, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the trial court's findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* The appellate courts defer to the trial court's superior position to determine credibility and the weight to be accorded testimony. *Id.* In order to revoke a suspended sentence, the State need only prove one violation. *Id.*

On appeal, Silvey argues that the State failed to show that he had violated the terms and conditions of his suspended sentence by a preponderance of the evidence. We note that Silvey has not contested the trial court's finding that he committed the offense of

fleeing; this alone is sufficient to support the revocation of Silvey's suspended sentence, as the State must only prove one violation of the conditions of suspension. *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). However, we also note that any of the other findings made by the trial court would have also been sufficient to support the revocation of Silvey's suspended sentence.

Affirmed.

GRIFFEN and HEFFLEY, JJ., agree.