

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

DIVISION II

CACR08-199

June 25, 2008

CRAIG L. TAYLOR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[CR-2004-0075-1]

HONORABLE HAMILTON H.
HOBBS, JUDGE

AFFIRMED; MOTION GRANTED

On October 14, 2004, appellant, Craig Taylor, pleaded guilty to violating the Arkansas Hot Check Law and was sentenced to five years' probation. A judgment and commitment order reflecting this sentence was filed on October 27, 2004. On March 8, 2007, the State filed a petition to revoke Taylor's probation, alleging that Taylor had failed to pay restitution, to report as directed, and to pay his supervision fees. After the hearing on the State's petition to revoke, held on November 8, 2007, the trial court revoked Taylor's probation on the basis that he had failed to report to his probation officer; Taylor was sentenced to five years in prison.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Arkansas Rules of the Supreme Court and Court of Appeals, Taylor's counsel has filed a

motion to withdraw on the grounds that the appeal is without merit. Counsel's motion was accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to Taylor made by the trial court on all objections, motions and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished Taylor with a copy of his counsel's brief and notified him of his right to file *pro se* points. Taylor has not filed any *pro se* points.

There were only two rulings adverse to Taylor during the revocation proceeding. The first occurred during the State's cross-examination of Taylor. Taylor testified that when he was in court two months before, his former probation officer, Ms. Moore, told him that he did not have to come back to see her, that she would get his probation reporting transferred to Sheridan. The prosecutor then responded to Taylor, "Well I don't know if you saw Ms. Moore's reaction [at the previous hearing] but her reaction was a quick jerk of the head and she didn't tell you you didn't have to comply did she?" Taylor's counsel objected to the prosecutor testifying; the prosecutor argued that it was cross-examination; and the trial court agreed that it was cross-examination and allowed the statement.

There was no error in the trial court allowing the prosecutor's statement during cross-examination. First of all, the rules of evidence are not followed during revocation hearings. *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). Nevertheless, our appellate courts have held that counsel performing cross-examination should be given wide latitude

because “cross-examination is the means by which to test the truth of the witness’s testimony and the witness’s credibility.” *Swinford v. State*, 85 Ark. App. 326, 331, 154 S.W.3d 262, 265 (2004). In this case, the prosecutor, during his cross-examination, made the point that Taylor’s probation officer had not excused him from his reporting requirements.

The other adverse ruling was the trial court’s decision to revoke Taylor’s probation. 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) (Repl. 2006). In probation revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court’s decision to revoke probation unless it is clearly against the preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only show that the appellant committed one violation in order to sustain a revocation. See *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

In this case, Taylor admitted that he had not reported to his probation officer as required by the terms of his probation. Although Taylor offered several reasons for not reporting, the trial court was not obligated to give credence to those excuses. Taylor’s admission that he did not report to his probation officer as required constitutes sufficient evidence to support the trial court’s revocation of his probation.

From a review of the record and the brief presented to this court, Taylor's counsel has complied with the requirements of Rule 4-3(j) of the Arkansas Rules of the Supreme Court and the Court of Appeals. The revocation of Taylor's probation is affirmed, and counsel's motion to be relieved is granted.

BIRD and MARSHALL, JJ., agree.