

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 10-608

MICHAEL GREGORY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered NOVEMBER 30, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR-07-1100]HONORABLE H.G. PARTLOW, JR.,
JUDGE

AFFIRMED; MOTION GRANTED

JOHN B. ROBBINS, Judge

This no-merit appeal comes before this court a second time. The appellant, Michael Gregory, pleaded guilty to commercial burglary on November 6, 2007, and was placed on a ten-year suspended imposition of sentence. The State filed a petition to revoke on August 12, 2009, and after a hearing the trial court revoked appellant's suspended sentence and sentenced him to five years in prison on the basis that he failed to pay restitution and fees and used alcoholic beverages in violation of his conditions. In the first no-merit brief, which was accompanied by a motion to withdraw, appellant's counsel failed to abstract all of the adverse rulings and provide explanations as to why each ruling could not support a meritorious appeal. In our first opinion, we ordered Mr. Gregory's counsel to rebrief the case and cure those deficiencies. See *Gregory v. State*, 2011 Ark. App. 406.

In accordance with our directive in our first opinion, Mr. Gregory's counsel has now filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court. Mr. Gregory was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but he has declined to file any points. We affirm.

Deborah Wiseman, the collector of fines for the Crittenden County Sheriff, testified at the revocation hearing. Ms. Wiseman indicated in her testimony that Mr. Gregory was significantly behind on paying his court-ordered restitution and fees. According to Ms. Wiseman, Mr. Gregory offered her no excuse for his delinquency.

West Memphis Police Officer Steven Jackson also testified for the State, and he stated that at 5:20 a.m. on July 22, 2009, he responded to a call of a vehicle being driven erratically. Officer Jackson located Mr. Gregory standing in a parking lot near a truck. Officer Jackson could smell intoxicants, and Mr. Gregory admitted that he drank a few beers. According to Officer Jackson, Mr. Gregory failed field-sobriety tests and registered .24 on a breathalyzer test.

In Mr. Gregory's counsel's brief, he asserts that there were seven adverse rulings during the revocation hearing, and that none could support a meritorious appeal. We agree.

The first adverse ruling occurred during cross-examination of Ms. Wiseman, when the State objected to appellant's questioning about whether appellant was in the room during a telephone conversation between her and appellant's probation officer, Daniel Scott. The State objected because the question called for speculation, and the trial court sustained the

objection. The objection and trial court's ruling actually accomplished appellant's goal of emphasizing Ms. Wiseman's lack of knowledge on this issue, so the trial court's ruling could not support a nonfrivolous argument on appeal.

The next adverse ruling occurred during the State's examination of Detective Jimmy Turnbow when Detective Turnbow was testifying about a criminal mischief that occurred at a local airport. The trial court overruled appellant's objection to Detective Turnbow's testimony that Mr. Gregory was being investigated in connection with that crime. However, that adverse ruling caused Mr. Gregory no harm because the trial court specifically granted him a directed verdict on the criminal-mischief allegation, and it provided no basis for the revocation.

The third adverse ruling occurred after the State rested and Mr. Gregory was making a motion for directed verdict. During that discussion, Mr. Gregory argued that the State failed to prove that there was probable cause to stop his truck and thus that the incriminating testimony of Officer Jackson should not be considered. Appellant's counsel correctly asserts in this appeal that this motion was untimely because it was not raised to the trial court until after Officer Jackson completed his testimony and the State rested. Moreover, there was evidence presented that Mr. Gregory inexcusably failed to pay restitution and fees, and the State need prove only one violation in order to revoke. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

The fourth and fifth adverse rulings came during appellant's examination of his parole officer, Mr. Scott. Appellant twice asked Mr. Scott whether he thought appellant

should be sent to prison, and the trial court sustained the State's objections both times. Appellant's counsel correctly asserts that neither ruling could support a meritorious appeal. The questioning was not relevant to the issue of whether Mr. Gregory violated the conditions of his suspended sentence, and his parole officer's opinion as to whether he should go to prison had no bearing on the disposition of the case.

The sixth adverse ruling occurred when the State asked Mr. Scott, "How much does being a drunk have to do with getting a job?" Mr. Gregory objected on the basis that the question was argumentative, but the trial court denied his objection. Mr. Scott then testified that he did not believe Mr. Gregory's drinking should keep him from getting a job. This ruling could not support a nonfrivolous appeal because it did not affect the outcome of the case and occurred during sentencing proceedings after the trial court had already found that Mr. Gregory violated his conditions.

The remaining adverse ruling was the revocation itself. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). In this case there can be no meritorious argument that the trial court's findings were clearly against the preponderance of the evidence because the State presented proof that Mr. Gregory inexcusably failed to pay restitution and fees and was found by the police to be in a state of extreme intoxication in violation of his conditions.

Based on our review of the record and the brief presented, we conclude that there has been compliance with Rule 4-3(k)(1) and that this appeal is without merit.

Consequently, appellant's counsel's motion to be relieved is granted and the judgment is affirmed.

Affirmed; motion granted.

GLADWIN and HOOFFMAN, JJ., agree.