

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR11-1254

JOHN SIDDELL JEFFERSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED SEPTEMBER 19, 2012APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR2009-772]HONORABLE DAVID LASER,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

John Siddell Jefferson appeals the Crittenden County Circuit Court's revocation of his suspended imposition of sentence, arguing that the circuit court had insufficient evidence to revoke. We affirm the revocation.

Appellant pled guilty to possession of a controlled substance with intent to deliver on September 22, 2009, in Crittenden County. He was sentenced to ten years' suspended imposition of sentence. The State filed a revocation petition on November 5, 2010, alleging that appellant had violated the conditions of his suspended sentence by (1) failing to pay costs and fees; (2) failing to notify the sheriff of his current address and employment; (3) committing two counts of selling or delivering marijuana and one count of possessing marijuana; and (4) failing to work regularly at suitable employment.

At the revocation hearing, Deborah Wiseman, collector of fines in the Crittenden County Sheriff's Department, testified that appellant owed \$645 pursuant to the underlying case wherein his sentence had been suspended. Appellant had also failed to make any payments on the total amount of \$2290 owed in Crittenden County in relation to three separate cases, which included the suspended sentence at issue in this matter.

Sergeant Jimmy Evans of the West Memphis Police Department testified that on September 21 and 22, 2010, he used a confidential informant to purchase marijuana from appellant and that these transactions were recorded on videotape. Based on these controlled buys, a warrant for appellant's arrest was prepared and served on appellant. At the time of appellant's arrest, police found that he had 7.7 grams of marijuana hidden in his pants.

The trial court found that the State proved that appellant had failed to pay fines and costs as ordered, that he had sold marijuana on September 21 and 22, 2010, and that he had possessed marijuana at the time of his arrest. Appellant was sentenced to fifteen years' imprisonment in the Arkansas Department of Correction and five years' suspended imposition of sentence. He filed a timely notice of appeal, and this appeal followed.

In a hearing to revoke a probation or suspended imposition of sentence, 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 probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Haley, supra*. The State bears the burden of proof, but need only prove that the defendant committed one violation

of the conditions. *Haley, supra*. 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. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Id.*

Appellant first contends that the trial court's finding that he failed to pay his fines and costs was in violation of Arkansas Code Annotated section 5-4-205(f)(3) (Supp. 2011), which requires that the trial court consider a defendant's employment status, earning ability, financial resources, willfulness, and any other special circumstances regarding defendant's ability to pay. When the State petitions to revoke probation for failure to pay fines and costs, it is obligated to prove by a preponderance of the evidence that the defendant inexcusably failed to comply with his payment obligation. Ark. Code Ann. § 5-4-309(d). However, once the State introduces evidence of nonpayment, the defendant bears the burden of going forward to offer some reasonable excuse for his failure to pay. *Cargill v. State*, 2011 Ark. App. 322. This shifting burden of production is intended to draw out the probationer's reason for nonpayment. *Id.* Deborah Wiseman's testimony establishing appellant's failure to pay his fines and costs was uncontested. Appellant failed to introduce any evidence that his failure to pay was excusable. Accordingly, we affirm the revocation.

Having affirmed the trial court's revocation of appellant's suspended sentence based on his failure to pay his fines and costs, we need not address the balance of appellant's

argument concerning the trial court's finding that he committed two counts of selling marijuana and was in possession of marijuana at the time of his arrest. The State had to prove only one violation to establish that appellant violated the conditions of his suspended sentence. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

Affirmed.

PITTMAN and ROBBINS, JJ., agree.

C. Brian Williams, for appellant.

Dustin McDaniel, Att'y Gen., by: *Ashley Argo Priest*, Ass't Att'y Gen., for appellee.