

Cite as 2012 Ark. App. 380

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR11-746

SCOTTIE JOINER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 13, 2012

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. CR-04-494, CR-08-833]HONORABLE BRENT DAVIS,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

On March 28, 2012, we ordered rebriefing. We now review Scottie Joiner's appeal on the merits. He appeals from an order of the Craighead County Circuit Court revoking his supervised probation. Joiner argues that the trial court erred (1) in denying his motion for a continuance; and (2) in revoking his probation based upon findings that he had failed to properly register as a sex offender and had inexcusably failed to pay his fines and costs. We affirm.

On October 7, 2004, Joiner pleaded guilty to carnal abuse and incest and was placed on five years' supervised probation. Among the conditions of his probation were requirements that he pay fines and costs and register as a sex offender. On May 22, 2009, the State petitioned to revoke Joiner's probation. It alleged that Joiner had failed to satisfy the previously

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mentioned conditions.

The case was finally heard on April 7, 2011. In the intervening time since the State filed its revocation petition, Joiner received eight continuances. Nonetheless, Joiner asked for another continuance, asserting that he needed to secure the attendance of an absent witness. The trial court noted that the case had already been continued on numerous occasions and denied the motion.

The trial court proceeded to hold the revocation hearing. Without objection, the State submitted a “balance sheet” that reflected that Joiner had not paid his fees and costs. Catherine Hale, an employee of Lindsey Management, testified that Joiner leased an apartment in Gladiola Apartment Manor in Jonesboro. Hale stated that, according to her records, Joiner actually lived in the apartment. However, Ernest Ward testified that he was tasked with tracking sex offenders in Jonesboro, and even though he received information that Joiner was living in the Gladiola apartments, he never actually found him there. Ward also stated that he did not verify whether Joiner was registered and residing in Truman.

Joiner explained that while he did lease the apartment, he never lived there. He claimed that he only signed the lease to help a pregnant female friend, Melissa Holshower. Joiner asserted that he lived in Truman, the town where he was registered. Joiner denied being the father of Holshower’s child, but admitted that he helped her financially by giving her \$420. He also admitted buying a prom dress for another female, whose name he could not recall. Regarding payment of his fees and costs, he admitted he had not made payments, but claimed

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that he thought his father was making the payments. Joiner also admitted that he had found a variety of jobs, but claimed that he had been fired after a few weeks from each of them when his employers discovered he was a registered sex offender. Nonetheless, he thought his fines and fees had been paid in full.

The trial court revoked Joiner's probation, finding that both of the grounds asserted in the State's petition had been proved. The trial court found that, by Joiner's own testimony in which he stated that he had given Melissa Holshower money and another girl a prom dress, Joiner had proved that his failure to pay his fees and costs was not justified because his first obligation was to the court. The trial court found Joiner's explanation that he thought his father was paying his fees and costs not credible. Likewise, the trial court found not credible Joiner's claim that he was renting the apartment in Jonesboro, but not living there himself.

Joiner first argues that the trial court erred by failing to grant him a continuance, which he needed to try to obtain a witness who could testify that he did not reside in Craighead County. We disagree.

The grant or denial of a continuance is within the sound discretion of the trial court, and the decision will not be overturned absent an abuse of discretion amounting to a denial of justice. *Newton v. State*, 2011 Ark. App. 190, ___ S.W.3d _____. The following factors are to be considered by the trial court in deciding a continuance motion: (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the attendance of the witness in the event of a postponement; and (4) the filing of an affidavit,

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stating not only what facts the witness would prove, but also that the appellant believes them to be true. *Id.*

Applying the factors, we hold that the trial court did not abuse its discretion in denying Joiner's continuance. Although he had nearly two years to find his witness, there is nothing in the record to suggest that he had ever attempted to locate her. Likewise, it was unlikely that Joiner could locate her in a timely manner had he tried inasmuch as he had only a vague idea that she had moved to Louisiana some years before. Finally, there was no affidavit in the record that proffering the witnesses testimony. Accordingly, we hold that the trial court did not abuse its discretion in refusing to grant Joiner another continuance.

Joiner next argues that the trial court erred in finding that he had inexcusably failed to pay his fines and costs, noting that he explained that he thought his father had paid them and his earning capacity was impaired by his status as a sex offender. We find this argument unpersuasive.

When we review a trial court's findings that an appellant violated the terms and conditions of his or her probation, those findings are upheld unless they are clearly against a preponderance of the evidence. *Cargill v. State*, 2011 Ark. App. 322. Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Id.* We defer to the trial court's superior position to resolve matters of witness credibility and the weight to be given testimony. *Id.* The supreme court has stated that when a trier of fact has given credence to testimony, it will not reverse unless "the testimony is inherently improbable,

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physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon.” *Id.* (citing *Brown v. State*, 374 Ark. 341, 345, 288 S.W.3d 226, 230 (2008)).

When the State petitions to revoke probation, 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) (Repl. 2006). 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, supra*. This shifting burden of production is intended to draw out the probationer’s reason for nonpayment. *Id.*

We note, as did the trial court, that Joiner testified that he had sufficient funds to make expensive gifts to individuals with whom he was barely acquainted. Moreover, the trial court found not credible Joiner’s excuse that he thought the fines and fees had been paid. Accordingly, we affirm the trial court’s finding that Joiner violated his probation by inexcusably failing to pay his fines and fees.

Having affirmed the trial court’s revocation of Joiner’s probation based on his failure to pay his fines and costs, we need not address the balance of Joiner’s argument concerning the trial court’s finding that he failed to properly register as a sex offender. The State had to prove only one violation to establish that Joiner violated the conditions of his probation. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

Affirmed.

PITTMAN and WYNNE, JJ., agree.