

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR 11-913

MANDRAKE HOLMES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-01-672-1]HONORABLE BERLIN C. JONES,
JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**DOUG MARTIN, Judge**

The Jefferson County Circuit Court found that appellant Mandrake Holmes violated the terms and conditions of his probation and, upon revocation, sentenced Holmes to six years' imprisonment. Defense counsel has filed a motion to withdraw on the basis that there is no merit to an appeal. We affirm the order of revocation and grant defense counsel's motion to be relieved.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, defense counsel's motion to withdraw was accompanied by an abstract and brief referring to everything in the record that might arguably support an appeal. Holmes was provided with a copy of his counsel's brief and notified of his right to file pro se points for reversal. Holmes did not file any points on appeal.

On July 7, 2003, Holmes was sentenced to four years' probation following his conviction for possession of cocaine. On March 22, 2007, the circuit court ordered that Holmes's probationary period be restarted from March 13, 2007, pursuant to the same terms and conditions. The circuit court also ordered Holmes to complete 120 hours of community service, complete a tour of the Arkansas Department of Correction, and undergo drug and alcohol treatment.

The State filed a petition to revoke on February 1, 2011, alleging that Holmes had violated the terms and conditions of his probation by testing positive for controlled substances, including marijuana, cocaine, and heroin/opiates. Holmes tested positive for THC (tetrahydrocannabinol), the active ingredient in marijuana, on January 3, 2008; March 6, 2009; April 27, 2009; July 21, 2009; September 9, 2009; February 23, 2010; April 7, 2010; and December 3, 2010. Holmes tested positive for cocaine on September 10, 2009; April 7, 2010; April 27, 2010; and December 3, 2010. Holmes tested positive for heroin/opiates on February 23, 2010. The State also alleged that Holmes failed to report to his probation officer in September 2008; October 2008; May 2009; October 2009; November 2009; December 2009; and January 2010. The State further alleged that Holmes moved to Little Rock on October 26, 2009, without permission. Finally, the State alleged that Holmes failed to complete forty hours of community service.

On March 16, 2011, in lieu of revocation, the circuit court entered an order providing that Holmes was to undergo treatment at New Hope Living Center for six months and that his failure to complete the program would be a violation of the terms and conditions of his

probation. On June 7, 2011, upon discovering that Holmes had left the program, the State amended its earlier petition to revoke to include the allegation that Holmes failed to complete drug treatment in that he was discharged from New Hope Living Center on April 15, 2011, for violating the facility's rules.

At the revocation hearing, Reginald Clayton, a court liaison for New Hope Living Center, testified that Holmes was in compliance with the facility's program but could not pay the weekly fee for treatment. Clayton stated that he was disappointed that Holmes did not attempt to set up a payment plan before simply leaving the facility. Further, Clayton denied that Holmes was discharged from the program. According to Clayton, Holmes did not reside in Little Rock; but rather, he commuted there in order to obtain treatment.

Lashondra Brown, a probation officer, recited Holmes's violations, as set forth in the State's petition. Brown testified that, on several occasions, Holmes claimed that he did not report because he had no transportation and, in November 2009, had a death in the family. According to Brown, Holmes called on October 26, 2009, to inform the probation office that he had moved to Little Rock. Brown further testified that, out of the 120 hours of community service that was ordered, Holmes had not completed forty.

Holmes testified that he has had a drug problem since he was thirteen years old. Holmes stated that, when he was at New Hope Living Center, he searched for a job but did not find one and could not afford the weekly fee to remain in treatment. Holmes claimed that, when he left the treatment center, he began attending Alcoholics Anonymous meetings. According to Holmes, he was currently drug free and employed. Holmes testified that he had

paid all the fines, fees, and costs that were owed. Holmes disagreed that he had failed to complete forty hours of community service but could not produce a certificate of completion to demonstrate otherwise. Holmes admitted that he had tested positive for drugs in 2008, 2009, and 2010. He also agreed that he had failed to report on the days alleged by the State but explained that he did not have a vehicle and sometimes could not afford to pay for transportation. Holmes claimed that, on October 26, 2009, he called and told the probation officer that he was “getting ready to move,” but he did not actually move to Little Rock. Contrary to testimony by Clayton, Holmes produced documentation confirming that he had been discharged from New Hope Living Center.

In revoking Holmes’s probation, the trial judge remarked that Holmes had been given almost ten years to comply with the terms and conditions of his probation. The trial judge noted that Holmes had stated at the outset of his probation that he did not want to perform community service; Holmes was “untruthful with the Court” when making arrangements with the drug-treatment facility and voluntarily left the program after only three weeks; Holmes failed to report on numerous occasions; Holmes was not credible in claiming that he did not move to Little Rock without permission; and Holmes’s testimony regarding his payment of fines, fees, and costs was “not exactly reliable” given that he had failed to bring any receipts. The circuit court then revoked Holmes’s probation and sentenced him to serve six years in prison.

In order 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. *Kimmel v. State*, 2012 Ark. App. 336. The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions. *Id.* We do not reverse a circuit court's findings on appeal unless they are clearly against the preponderance of the evidence. *Id.*

Defense counsel maintains that there were two adverse rulings, and that is confirmed by our review of the record. In light of Holmes's admission that he violated several conditions of his probation, we agree with counsel that the circuit court did not abuse its discretion with regard to the one evidentiary ruling that occurred at the hearing¹ and that the circuit court's decision to revoke Holmes's probation was not clearly against the preponderance of the evidence. Therefore, we hold that an appeal from the circuit court's revocation would be wholly without merit. Accordingly, we affirm the order of revocation and grant defense counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HART and GLADWIN, JJ., agree.

Potts Law Office, by: Gary W. Potts, for appellant.

No response.

¹The prosecutor asked Brown whether Holmes had reported in June 2009. Counsel objected on the basis that it was not alleged in the State's petition that Holmes failed to report in June 2009. The prosecutor explained that his inquiry involved whether, at the time of that report, Holmes had offered any explanation to the probation officer concerning his failure to report on earlier dates.