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ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-94

TERESA HUNTER APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** OCTOBER 12, 2011 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. CR-05-553-4] HONORABLE MARCIA R. HEARNSBERGER, JUDGE AFFIRMED

CLIFF HOOFMAN, Judge

Appellant Teresa Hunter's probation was revoked after the trial court found that she had violated the conditions of her probation by pleading guilty to the offense of failure to appear at a scheduled court hearing. Hunter was sentenced by the trial court to six years' imprisonment. On appeal, Hunter argues that the trial court erred in finding that she knowingly and inexcusably violated the conditions of her probation. We affirm.

On November 29, 2006, Hunter entered a negotiated plea of guilty to the offense of attempted theft of property over $500 and was sentenced to five years' probation. She also signed a document outlining the written terms and conditions governing her behavior during the period of her probation. These conditions included the requirement that Hunter comply with all federal and state laws, local ordinances, and court orders. On August 19, 2010, the State filed a petition to revoke Hunter's probation, alleging that she violated the conditions by committing the following offenses: theft by receiving over $2500, residential burglary,

failure to appear, DWI, refusal to submit, and endangering the welfare of a minor.

At the revocation hearing on September 14, 2010, the trial court dismissed the allegations in the petition that Hunter had committed the offenses of DWI, refusal to submit, and endangering the welfare of a minor, because no evidence was presented by the State as to those alleged violations. Instead, much of the testimony at the hearing focused on the State's allegation that Hunter had committed theft by receiving. However, because the trial court revoked Hunter's probation solely on the finding that she had pled guilty to the offense of failure to appear, we only discuss the evidence applicable to this particular ground for revocation.

The State admitted into evidence a transcript of a judgment from the Garland County District Court, showing that Hunter pled guilty on July 13, 2010, to the offense of failure to appear, a Class A misdemeanor. When questioned about the judgment, Hunter did not dispute that she had failed to appear at a scheduled June 2010 court hearing. She testified that she did not appear because she had a family emergency. She stated that her child had a doctor's appointment and that "it slipped my mind, honestly." Hunter testified that she found out about the warrant for her arrest for failure to appear when she went to pay her monthly fine and that she was arrested at that time. She further admitted that she pled guilty to this offense and paid a fine.

At the conclusion of the hearing, the trial court found that Hunter knowingly and inexcusably violated the conditions of her probation by pleading guilty to failure to appear and sentenced her to six years' imprisonment. Hunter timely appealed from this order and

challenges the trial court's decision to revoke her probation.

According to Ark. Code Ann. § 5-4-309(d) (Supp. 2009), a trial court may revoke a defendant's probation at any time prior to the expiration of the probationary period if the court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. The burden is on the State to prove a violation of a condition of probation by a preponderance of the evidence. *Sanders v. State*, 2010 Ark. App. 563. Once the State has done so, the defendant has the burden to offer some reasonable excuse for his or her failure to comply. *Id.* On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Cargill v. State*, 2011 Ark. App. 322. Because a determination of the preponderance of the evidence turns heavily on questions of credibility and weight to be given to the testimony, the appellate courts defer to the trial court's superior position in this regard. *Id.*

Hunter contends that the trial court erred by finding that she "knowingly and inexcusably" violated the conditions of her probation because she testified that her failure to appear was due to a family emergency and that the hearing had simply "slipped her mind." In the context of a revocation hearing, "inexcusable" has been defined as "incapable of being excused or justified . . . unpardonable, unforgivable, intolerable." *Barbee v. State*, 346 Ark. 185, 189, 56 S.W.3d 370, 372 (2001) (citing *Random House Compact Unabridged Dictionary* 977 (1996)).

This court has previously held that a defendant's claim that he forgot to comply with a condition of his probation or suspended sentence, or that it "slipped his mind," does not

excuse the violation. *See, e.g.*, *Cargill v. State*, *supra*; *Britt v. State*, 2010 Ark. App. 21. Here, when Hunter was questioned about her claim of a family emergency, she testified that her child had a doctor's appointment the day of the court hearing and that this was the reason she forgot to attend. By its finding that Hunter knowingly and inexcusably violated the conditions of her probation by pleading guilty to failure to appear, the trial court clearly did not find Hunter's explanation to be a reasonable excuse for failing to attend her hearing, and we defer to the trial court's credibility determination. *Cargill*, *supra*. Further, Hunter's contention to the trial court and on appeal that her failure to appear was excusable is clearly inconsistent with her plea of guilty to the offense in district court; she had the opportunity to present her excuse to that court but instead chose to plead guilty. As the State correctly notes, a plea of guilty to a new criminal offense is sufficient in itself to support the trial court's finding by a preponderance of the evidence that the defendant violated his or her probation. *Johnson v. State*, 2009 Ark. App. 527. Thus, the trial court's finding that Hunter inexcusably violated the conditions of her probation by pleading guilty to failure to appear is not clearly erroneous, and we affirm.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.