

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CACR12-115

FREDDIE ATKINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 30, 2013APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT,  
[NO. CR-09-1545]HONORABLE JOHN N.  
FOGLEMAN, JUDGE

AFFIRMED

**WAYMOND M. BROWN, Judge***I. Statement of the Case*

On April 12, 2010, the Circuit Court of Crittenden County sentenced Freddie Atkins to eighteen months of supervised probation for possession of a controlled substance. On May 16, 2011, a petition to revoke Atkins's probation was filed, and on October 25, 2011, Atkins was found to have violated the terms of his probation and was sentenced to thirty-six months in the Arkansas Department of Correction. Atkins appeals, arguing that the evidence was not sufficient to support the revocation of his probation. We affirm.<sup>1</sup>

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<sup>1</sup>This is the second time this case is before us. We ordered rebriefing when it was originally submitted in no-merit form due to deficiencies. See *Atkins v. State*, 2012 Ark. App. 454.

*II. Factual and Procedural History*

This case concerns the inability of Atkins to maintain contact with his probation officer, thus violating the terms of his probation. On October 12, 2010, Atkins pled guilty to possessing a controlled substance and was sentenced to eighteen months of supervised probation. He was aware of the importance of reporting regularly with his probation officer as indicated by Mary Marshall, the probation officer assigned to Atkins, in her testimony.

Initially, Atkins reported as mandated; however, since February 2011, Atkins failed to report to his probation officer. After Atkins failed to appear for his scheduled meetings in March and April 2011, Marshall sent a letter on April 8, 2011, requesting that Atkins appear on April 15, 2011; however, Atkins failed to do so. On April 22, 2011, Marshall visited Atkins's residence and left a notice informing Atkins to report on April 26, 2011. Again, Atkins failed to report. On May 4, 2011, Marshall filed a violation report. The State filed a petition to revoke Atkins's probation on May 16, 2011, alleging multiple grounds for revocation, including that Atkins failed to report as directed.

Atkins attributed bad weather for his failure to appear, stating that in March and April 2011, there was flooding that prevented him from leaving his home. He testified that a lack of electricity caused his mother, with whom he lives, to have to move in with his sister in Memphis. Atkins stated that he was unable to leave the house for fear that it would be broken into. Additionally, he stated that he usually rode his bike to the probation office but that someone stole the bike in June. He conceded that he could have walked three blocks to Broadway to catch the bus to the probation office after his bike was stolen. Further, Atkins

admitted that he failed to report to probation after July because he did not have the money required for his fees. Atkins stated that he attempted to contact Marshall a couple of times, but received a recording.

The Crittenden County Circuit Court found Atkins to have inexcusably violated the terms of his probation by failing to report to his probation officer. The court disregarded Atkins's excuse of bad weather, stating that it did not justify a lengthy time period of failing to appear. Atkins was sentenced to three years in the Arkansas Department of Correction. He timely filed a notice of appeal. This appeal followed.

### III. *Analysis*

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension.<sup>2</sup> In reviewing the trial court's decision to revoke probation of an appellant this court will not reverse its findings unless they are clearly against the preponderance of the evidence.<sup>3</sup> Further, per *Pitchford v. State*,<sup>4</sup> because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, we will defer to the superior position of the trial court in deciding these matters.

When revoking Atkins's probation, the court relied on Marshall's testimony that Atkins was aware of the importance of reporting to his probation officer, as well as Atkins's own

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<sup>2</sup>*Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003).

<sup>3</sup>*Kimmel v. State*, 2012 Ark. App. 70.

<sup>4</sup>2011 Ark. App. 188.

testimony that he purposely did not attend probation visits due to his failure to pay his fees. The court found that Atkins did not provide a reasonable explanation for missing multiple scheduled appointments. After examining the court's reasoning and the evidence in Atkins's case, we find no merit to appellant's argument. As the trial court's findings are not clearly against the preponderance of the evidence, we affirm the revocation.

Affirmed.

HIXSON and WOOD, JJ., agree.

*C. Brian Williams*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.