

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR12-136

REGINALD MULDREW

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 10, 2012APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CR2010-556-I]HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Reginald Muldrew appeals the revocation of his suspended sentence. He contends that the trial court erred in finding that he willfully and inexcusably violated a condition of his suspended sentence. We disagree and affirm.

In February 2011, Mr. Muldrew pleaded guilty in the Circuit Court of Garland County to a charge of failure to comply with sex-offender registration and reporting requirements. See Ark. Code Ann. § 12-12-904 (Repl. 2009). He received a ten-year suspended sentence subject to various conditions, the first of which required that he not commit any criminal offense punishable by imprisonment. In a May 31, 2011 motion to revoke the suspended sentence, the State alleged that Mr. Muldrew violated this condition. The basis of the motion was Mr. Muldrew's May 14, 2011 arrest for the offense of failure to comply with sex-offender registration and reporting requirements.

At the conclusion of a revocation hearing, the trial court found that Mr. Muldrew had relied upon his homeless status to ignore requirements that he register as a sex offender and had made no effort to comply with those requirements. The court revoked his suspended sentence and sentenced him to nine years in the Arkansas Department of Correction. Mr. Muldrew appeals from the judgment and commitment order of September 2, 2011.

In order to revoke a suspended sentence or probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of suspension or probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2011) (formerly codified at Ark. Code Ann. § 5-4-309(d) (Supp. 2009)). In revocation cases, the State has the burden of proof by the preponderance of the evidence but needs to prove only one violation; we will not reverse the trial court's decision to revoke unless it is clearly against the preponderance of the evidence. *Williams v. State*, 2012 Ark. App. 447. When the determination of a preponderance of the evidence turns on questions of credibility and weight, we defer to the superior position of the trial court to decide these matters. *Reyes v. State*, 2012 Ark. App. 358. In Arkansas, a person who fails to register as a sex offender is guilty of a Class C felony. Ark. Code Ann. § 12-12-904(a)(1)(A)(i) (Repl. 2009). The registration requirements are mandatory, and failure to comply is a strict-liability offense. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007). No scienter is required to trigger this provision; the offender's failure to register alone is sufficient. *Kellar v. Fayetteville Police Dep't*, 339 Ark. 274, 5 S.W.3d 402 (1999).

Sonya Luzador, a detective with the Hot Springs Police Department, testified at the

hearing that it was her responsibility to ensure compliance with sex-offender registration requirements, to make sure that sex offenders were reporting as required, and to issue arrest warrants for those who did not comply. She described Mr. Muldrew's compliance as "none whatsoever," explaining that

[w]e've had patrol officers encounter him on the street helping remind him to come in and see us. He always failed to do so. He habitually fails to report as required. . . . My office has had contact with him since he was let out of jail on that suspended sentence. He has not come in to register since that date. Other officers had tried to get him to do it. . . . He just never comes in and sees us to report.

Det. Luzador stated that her office knew that Mr. Muldrew was homeless—living primarily in his vehicle, or sometimes in a motel; that on May 7, 2011, an officer encountered him and told him to come in; and that on May 14, 2011, he was served with a warrant for failure to comply with sex-offender registration requirements. She said that she and Detective Norris were the two that Mr. Muldrew should have checked in with; he never checked in with her during the pertinent time; there were no occasions when he called and left her a message regarding his whereabouts; and there was no indication in his file of in-person contact with Det. Norris.

Mr. Muldrew testified that he reported at the police station to a middle-aged, white female and that he reported by telephone. He testified that he had checked in at two different motels, but police notified him he could not stay in either—Det. Norris told him he had to move from the Relax Inn but did not explain why, and when he moved to the Capris Inn Central, a female officer came to his door and told him to move immediately. He explained that his funds ran low and his vehicle was stolen and stripped, but he got the car back and had

contact with officers several times while he was living in it. He testified that an officer told him on May 7 to “show up” and advise officers of where he was living; he went to the police department on May 9 to see Det. Norris, but he was not in; Mr. Muldrew asked that the detective be told he had come in; and Mr. Muldrew left him phone messages explaining that he (Muldrew) had been evicted from every place he had been, was broke, and needed some idea of where he could stay. He testified that he gave the clerk of the court cards for both motels, per the court’s instructions.¹

The trial court granted the State’s petition to revoke upon finding that Mr. Muldrew had failed to register as a sex-offender and had made no effort to do so, thus violating the condition of suspended sentence that he commit no criminal act punishable by imprisonment. Mr. Muldrew argues on appeal that he attempted to comply with sexual-offender registration requirements, he became homeless because of evictions and insufficient funds, and he had no choice but to live in his car. The State points out that the revocation was not based on Mr. Muldrew’s homelessness, but on his failing to inform officers of where he was living and his inexcusable failure to register.

The trial court’s decision turned on its evaluation of the testimony regarding Mr. Muldrew’s failure to register as a sex offender, a Class C felony constituting a violation of the condition that he not commit any criminal offense punishable by imprisonment. The weight

¹A special condition of Mr. Muldrew’s suspended sentence was that, within seventy-two hours of release, he report to the circuit clerk’s office to notify it of his address and obtain copies of related documents and that, within seventy-two hours of any address change, he report the new address. Violation of this condition was not the basis of revocation.

and credibility of the testimony were within the province of the trial court. We hold that the court did not clearly err in finding that Mr. Muldrew made no effort to comply with registration requirements, and we therefore affirm the revocation of suspended sentence.

Affirmed.

VAUGHT, C.J., and WYNNE, J., agree.

Douglas D. Ennis, for appellant.

Dustin McDaniel, Att’y Gen., by: *Pamela A. Rumpz*, Ass’t Att’y Gen., for appellee.