Cite as 2012 Ark. App. 556

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 12-140

	Opinion Delivered October 3, 2012
NICHOLAS V. PFEIFER APPELLANT	APPEAL FROM THE YELL COUNTY CIRCUIT COURT, NORTHERN DISTRICT
V.	[NO. CR-2010-52]
STATE OF ARKANSAS APPELLEE	HONORABLE JERRY RAMEY, JUDGE
	AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Nicholas Pfeifer appeals from the revocation of his probation, arguing that the bases for the revocation were improper and that the circuit court erroneously failed to consider alternatives to imprisonment. We affirm.

Background

On March 18, 2011, appellant pleaded guilty to Class B felony kidnapping[1] and was placed on probation for 240 months. Appellant signed written conditions of his probation, which included the following:

> You must not drink or possess intoxicating or alcoholic beverages, or be present in any establishment where its main source of income is derived from the sale of such beverages.

[1]Ark. Code Ann. § 5-11-102(b)(2) (Repl. 2006).

> You must not use, sell, distribute, or possess any controlled substance, or associate with any person who is participating in or known to participate in the illegal use, sale, distribution or possession of controlled substances.

On July 7, 2011, appellant was convicted in Dardanelle district court of public intoxication and disorderly conduct—both misdemeanors—arising from his conduct at a pool party he attended on June 26, 2011. Appellant was fined $425, to be paid at a rate of $50 per month. The State subsequently filed a petition to revoke appellant's probation on the grounds that he had committed the offense of public intoxication, had confessed to the use of marijuana, and was delinquent in paying his court-ordered fines. Following a revocation hearing on November 1, 2011, the circuit court found appellant in violation of his probation, revoked his probation, and sentenced him to 240 months in the Arkansas Department of Correction. A timely notice of appeal was filed on November 22, 2011.

Discussion

A sentence of probation may be revoked if a trial court finds by a preponderance of the evidence that a defendant has inexcusably failed to comply with a condition of his probation.[2] We give great deference to the trial court in determining the preponderance of the evidence because the trial judge is in a superior position to determine the credibility of witnesses and to determine the weight to be given their testimony.[3] We will not reverse the revocation

[2]Ark. Code Ann. § 16-93-308(d) (Supp. 2011); *Denson v. State*, 2012 Ark. App. 105.

[3]*Id.*

unless the decision is clearly against the preponderance of the evidence.[4] Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence.[5]

Appellant argues that the trial court erred in revoking his probation based on a failure to pay fines because there was no evidence that he did not pay. He also argues that the trial court erred in basing the revocation on his district-court conviction for misdemeanor public intoxication, on the grounds that he was not represented by counsel in those proceedings. However, these arguments are moot because to sustain a revocation, the State need only show that appellant committed one violation of his conditions of probation.[6] In this case, even setting aside the alleged fine delinquencies and the misdemeanor conviction, the preponderance of the evidence was that appellant violated the conditions of his probation that prohibited him from possessing or using alcohol or illegal drugs.

An auxiliary county deputy who was present when appellant was arrested at the pool party testified that appellant admitted he had been drinking. In addition, an acquaintance and a lifelong friend of appellant who were at the party both testified that appellant was drinking heavily at the party and was intoxicated. Appellant does not dispute, below or on appeal, that he used marijuana and alcohol in violation of the terms of his probation. On the contrary, on June 8, 2011, he signed a written confession that he had used marijuana three weeks

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[4] *Id.*

[5] *Knotts v. State*, 2012 Ark. App. 121.

[6] *Denson*, *supra*.

earlier.[7] In light of this evidence, we find no clear error in the circuit court's determination that appellant violated the conditions of his probation, and affirm the revocation of appellant's probation.

Appellant also argues that the circuit court erred by not considering alternatives to the twenty-year sentence it imposed. This argument apparently finds its basis in the violation report of appellant's probation officer, which recommended 120 days of jail and electronic monitoring for six months, and the fact that the prosecuting attorney requested a sentence of ten years at the revocation hearing. However, this argument was not preserved for appeal because appellant failed to object to his sentence below.[8] Our supreme court has held, "A defendant who makes no objection at the time sentence is imposed has no standing to complain of it."[9]

In any case, the twenty-year sentence imposed by the circuit court was authorized by the kidnapping statute and therefore was not improper. Arkansas Code Annotated section 16-93-308(g)(1)(A) (Supp. 2011) provides that the court revoking probation may enter a judgment of conviction and may impose any sentence on the defendant that might have been imposed originally for the offense of which he or she was found guilty. Appellant received probation after pleading guilty to Class B felony kidnapping, which carries a term of

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[7]Probation officer Lisa Wells testified that appellant had confessed to using marijuana on June 8, 2011, and the signed confession was entered into evidence.

[8]*McGee v. State*, 271 Ark. 611, 609 S.W.2d 73 (1980); *Simmons v. State*, 95 Ark. App. 114, 234 S.W.3d 321 (2006).

[9]*Ladwig v. State*, 328 Ark. 241, 246, 943 S.W.2d 571, 574 (1997).

imprisonment of five to twenty years.[10] This court may not reduce a sentence that is within the range of punishment contemplated by the legislature;[11] hence, we affirm.

Affirmed.

ABRAMSON and HOOFMAN, JJ., agree.

Laws Law Firm, P.A., by: *Hugh R. Laws*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.

[10]Ark. Code Ann. § 5-4-401(a)(3) (Repl. 2006).

[11]*Simmons*, *supra*.