

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-934

GERRY D. SEALS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 15, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT[Nos. CR-2006-652D, CR-2006-730C,
CR-2008-141, CR-10-11]HONORABLE STEPHEN TABOR,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Gerry Seals appeals from an order of the Sebastian County Circuit Court finding by a preponderance of the evidence that he had violated the terms and conditions of his suspended sentences and sentencing him to a total of thirty-four years' imprisonment in the Arkansas Department of Correction (ADC). On appeal, Seals argues that the circuit court lacked jurisdiction because the State named the wrong statute in its petition to revoke; the circuit court erred by failing to suppress his statement to police; and the State failed to prove by a preponderance of the evidence that Seals violated the terms and conditions of his suspended sentences. We see no error and affirm the revocations and corresponding sentences.

In a hearing on a petition to revoke, the burden is on the State to prove the violation of a condition of the probation by a preponderance of the evidence; however, on appeal we do not reverse the trial court's decision unless it is clearly against the preponderance of the

evidence. *Gibbs v. State*, 2009 Ark. App. 645, at 1–2. Neither the same quality nor degree of proof is required for the exercise of the court’s discretion to revoke the suspension of a sentence as is required for the finding of guilt beyond a reasonable doubt; because the defendant in a probation–revocation proceeding is not being tried on a criminal charge, only a preponderance of the evidence is necessary to support a finding that the probationer has inexcusably breached a condition associated with his release. *Id.* Deference is given to the trial court’s superior position to weigh the evidence and determine witness credibility. *Knotts v. State*, 2012 Ark. App. 121, at 2. And, in order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Id.*

On November 15, 2006, Seals pled guilty to conspiracy to possess cocaine with the intent to deliver (Class A felony), possession of drug paraphernalia (Class C felony), possession of marijuana (Class A misdemeanor), and possession of marijuana with intent to deliver (Class C felony). He received a sentence of three years in the Arkansas Department of Correction and a seven–year suspended imposition of sentence for each of the felonies. Seals’s suspended sentences were revoked on December 19, 2007, and he was sentenced to one year in the Arkansas Department of Correction and nine years’ suspended imposition of sentence.

On February 13, 2008, Seals pled guilty to possession of drug paraphernalia (Class C felony), second offense possession of marijuana (Class D felony), and furnishing prohibited articles (Class C felony). He received a three–year sentence for each of the offenses with an additional seven–year suspended imposition of sentence for the C felonies and a three–year suspended imposition of sentence for the D felony. His suspended sentences were revoked

when Seals pled guilty, on January 27, 2010, to a third offense possession of marijuana (Class C felony) and possession of drug paraphernalia (Class C felony). For each felony Seals received a sentence of three years in the Arkansas Department of Correction with an additional seven-year suspended imposition of sentence.

On July 29, 2011, the State filed a petition to revoke Seals's suspended sentences, following an unfortunate incident involving the murder of Seals's wife and unborn child. At no time was Seals a target of the criminal investigation surrounding these murders; however, he was interviewed by the investigators and during the interview made several admissions that established that he had violated the terms and conditions of his suspended sentences. At the hearing, the circuit court found that the alleged infractions had been proved by a preponderance of the evidence. Seals's suspended sentences were revoked, and he was sentenced to a total of thirty-four years in the ADC. It is from these revocations and resulting sentences that he now appeals.

For his first point on appeal, Seals argues that the circuit court lacked jurisdiction to revoke his suspended sentences because the State's petition alleged that his sentences should be revoked pursuant to Arkansas Code Annotated section 5-4-309 rather than section 16-93-308.¹ Irregularities in a petition to revoke do not deprive a circuit court of jurisdiction to revoke a suspended sentence. *Reynolds v. State*, 282 Ark. 98, 100, 666 S.W.2d 396, 397 (1984). And, to the extent that Seals now argues that the petition to revoke provided

¹After Act 570 went into effect on July 27, 2011, § 5-4-309 was repealed and recodified as § 16-93-308.

inadequate notice, he made no such argument below. As such, we will not consider the argument for the first time on appeal. *Scroggins v. State*, 2012 Ark. App. 87, at 8, 389 S.W.3d 40, 45.

For his second point on appeal, Seals argues that the statements he made to police were obtained in bad faith and should have been suppressed by the circuit court. When reviewing a denial of a motion to suppress in a revocation case, we make an independent examination based on the totality of the circumstances and reverse the circuit court's decision only if it was clearly against the preponderance of the evidence. *Moss v. State*, 2010 Ark. App. 613, at 4. The exclusionary rule does not apply in revocation hearings unless the defendant demonstrates that the officers conducting the search acted in bad faith. *Jones v. State*, 2011 Ark. App. 543, at 3. Bad faith includes official misconduct that shocks the conscience of the court or officer action where the primary purpose is to seek revocation or to harass the defendant. *Id.*

Here, Fort Smith Detective Jeff Carter was investigating a triple murder that included Seals's wife and unborn child. Seals was interviewed by Carter and Detective Steve Napier as a witness who might be able to provide information in relation to the investigation of the murders. Because Seals was not a suspect in the murders he was not placed in custody or Mirandized. In his statement to police, Seals detailed to officers his participation in at least three drug transactions in the seventy-two-hour period prior to the interview.

According to the officers' testimony, Seals stated that one of the deals involved a man named Wolfe (first name either Keith or Kevin), to whom Seals sold a pound of marijuana mixed with rabbit food. When Wolfe discovered the deception, he took Seals's wife hostage

and demanded that Seals return the \$400 that Wolfe paid for the marijuana. In response, Seals gathered four friends (all convicted felons), an AR-15 rifle, and went to confront Wolfe. When they arrived, Wolfe had already murdered Seals's wife and unborn child, another woman, and had wounded a third.

These statements ultimately formed the basis for the State's petition to revoke, alleging that Seals committed the offenses of possession of marijuana with the intent to deliver, delivery of marijuana, possession of a counterfeit substance with intent to deliver, delivery of a counterfeit substance, felon in possession of a firearm, and associating with felons or persons of bad character, all in violation of the terms and conditions of his suspended sentences.

At trial, the investigating detective testified that he did not know that Seals was going to give an incriminating statement when the questioning began, and it was not the officer's intent that Seals would be arrested. However, the officer testified that he had no control over what Seals's parole officer did with the information gleaned from the murder investigation. Thus, based on this statement alone, we are satisfied that Seals has failed to prove bad faith on the part of the police, and as a result, the circuit court did not err in its decision to deny his motion to suppress.

Finally, Seals argues that there was insufficient evidence to support the petition to revoke. Indeed, the entire revocation petition was based on his uncorroborated confession; however, this is sufficient to support revocation of a suspended sentence. *Freeman v. State*, 2010 Ark. App. 8, at 3–5. Here, Seals detailed multiple violations of the conditions of his release—including his admission to selling marijuana cut with rabbit food, possessing a

firearm, and associating with four convicted felons. Based on Seals's own statements, it cannot be said that the circuit court's finding that Seals violated the terms and conditions of his suspended sentences was clearly against the preponderance of the evidence. As such, we affirm on this point as well.

Affirmed.

GRUBER and GLOVER, JJ., agree.

Ogles Law Firm, P.A., by: *John Ogles*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Jake H. Jones*, Ass't Att'y Gen., for appellee.