

ARKANSAS COURT OF APPEALSDIVISION IV
No. CR-13-126

KELVIN E. LOCKE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 20, 2013

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-06-366-5-2]HONORABLE ROBERT H. WYATT,
JR., JUDGEAFFIRMED; MOTION TO
WITHDRAW GRANTED**BILL H. WALMSLEY, Judge**

The Jefferson County Circuit Court found that appellant Kelvin Locke violated the terms and conditions of his probation and, upon revocation, sentenced him to five years' imprisonment. Defense counsel has filed a motion to withdraw on the basis that there is no merit to an appeal. We affirm the order of revocation and grant counsel's motion to withdraw.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, counsel's motion to withdraw was accompanied by a brief that lists all rulings that were adverse to Locke with an explanation as to why each adverse ruling is not a meritorious ground for reversal. Locke was provided with a copy of counsel's brief and submitted pro se points for reversal, to which the State has responded.

On August 5, 2008, Locke pleaded guilty to commercial burglary and was sentenced to three years' probation. He was ordered to pay restitution, fines, and costs and to complete 120 hours of community service. The State filed a petition to revoke on September 8, 2009, alleging that Locke had violated the conditions of his probation by testing positive for cocaine in August 2008 and marijuana in September 2008; failing to report in October, November, and December of 2008 and in January, February, March, April, May, June, July, and August of 2009; failing to maintain steady employment; failing to pay restitution, fines, and costs; and failing to complete community-service hours. In June 2012, Locke was apprehended in Texas and extradited to Arkansas.

At the revocation hearing, Dametria Rochelle, a probation officer, testified that she was assigned to Locke "when he surfaced" on June 13, 2012. Rochelle testified that Locke's file indicated that he had last reported to the probation office on August 5, 2008, the day on which he was placed on probation. According to Rochelle, even though it appeared as though Locke had been given permission to travel to Dallas, Texas, Locke was scheduled to report to the probation office in Arkansas on September 4, 2008. Rochelle testified that, although a transfer request was signed by Locke's previous probation officer, the request was not dated, and there was no indication that Locke had been accepted for transfer by Texas. Rochelle testified that Locke did not follow up on his transfer request. When Locke first reported to Rochelle on July 9, 2012, she confronted him with his positive drug tests in 2008, and Locke claimed that he had not used drugs in over a year. Rochelle testified that Locke provided proof that he was employed at Girling Healthcare in Austin, Texas, for one month.

Rochelle stated that Locke had applied for disability benefits because he had injured his ankle, had a stint in his heart, had high blood pressure, was borderline diabetic, and took medication for bipolar disorder. Locke had an outstanding balance of \$2,960 on his restitution, fines, and costs and had made no payments. Further, Locke failed to perform any community service.

Locke testified that he had been living in Texas since the day he was placed on probation. He did not report in Arkansas because he believed that his probation had been transferred to Texas. He admitted, however, that he never reported to anyone in Texas either. According to Locke, he returned to Arkansas on three occasions but was told each time by someone at the probation office that his paperwork was not complete and that he would be notified. He also claimed that he had provided three money orders toward payment of his restitution, fines, and costs but that the Arkansas probation office returned them to him because his paperwork was not complete. Locke testified that he was subsequently injured and “lost contact” with the probation office. Locke conceded that he had done nothing to comply with the conditions of his probation over a four-year period.

The trial court revoked Locke’s probation based on his failure to report and two positive drug tests. The trial court found that, although Locke was in the process of transferring his probation to Texas, it was Locke’s responsibility to make sure the requisite paperwork was complete.

In revocation proceedings, the State must prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the appellant inexcusably violated one condition

of probation. *Hunter v. State*, 2013 Ark. App. 387. We do not reverse a circuit court's decision to revoke unless it is clearly against the preponderance of the evidence. *Id.* This court defers to the circuit court's superior position to determine credibility and the weight to be accorded testimony. *Id.*

The revocation decision was the only adverse ruling at the hearing. The evidence showed that Locke left Arkansas on the day of intake and that he did not report to any probation officer in either Arkansas or Texas, even though reporting was clearly a condition of his probation. Given Rochelle's testimony, along with Locke's admissions, a preponderance of the evidence supports the trial court's determination that Locke violated the conditions of his probation. We agree with counsel that there is no meritorious ground for reversal based on the sufficiency of evidence supporting the revocation.

In his pro se points for reversal, Locke argues that Rochelle testified from "secondhand information" in his file, which amounted to hearsay. According to Locke, the trial court should have considered only "original copies" from his file, and his previous probation officer should have been compelled to testify. Locke asserts that Rochelle did not test him for illegal drugs on July 9, 2012. Also, Locke claims that the trial court did not permit him to introduce his medical records at the hearing.

Locke failed to present any of these arguments to the trial court, and arguments raised for the first time on appeal will not be considered because the trial court did not have an opportunity to rule on them. *Wakeley v. State*, 2013 Ark. App. 231. In any event, the circuit court has considerable discretion to control the introduction of evidence at a revocation

hearing because the rules of evidence are not strictly applicable in such proceedings. Ark. R. Evid. 1101(b)(3). As a result, Rochelle could properly testify as to the contents of Locke's file. The fact that Rochelle did not administer a drug test in 2012 is of no consequence because, even if Locke had tested negative for illegal drugs at that time, Locke had tested positive for illegal-drug use while on probation in 2008. Finally, Locke did not request that his medical records be introduced into evidence, and the trial court specifically stated that testimony as to Locke's medical conditions would be accepted "at face value."

From our review of the record and counsel's brief, we find that counsel has complied with Rule 4-3(k) and that the appeal is wholly without merit. Therefore, we affirm the order of revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GLADWIN, C.J., and GRUBER, J., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

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