

ARKANSAS COURT OF APPEALSDIVISION I
No. CR-13-63

KEVIN LEON DATES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 19, 2013APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT,
[NO. CR-2011-518]HONORABLE DAVID GOODSON,
JUDGE

AFFIRMED; MOTION GRANTED

RITA W. GRUBER, Judge

On August 8, 2011, Kevin Leon Dates pleaded guilty to commercial burglary and received thirty-six months' probation, subject to written conditions. The State subsequently filed a petition to revoke probation based upon violation of conditions. In a sentencing order of November 5, 2012, the circuit court revoked Dates's probation and sentenced him to thirty-sixty months' imprisonment in the Arkansas Department of Correction. As allowed by Rule 4-3 of the Rules of the Arkansas Supreme Court and Court of Appeals, his counsel brings a no-merit appeal and a motion asking to be relieved as counsel. Dates has not filed points for reversal despite being notified by the clerk of this court that he had the right to do so.

In order to revoke suspension or probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of the suspension or probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2011). The State need

show only one violation of probation, and the circuit court's decision to revoke will not be reversed unless it is clearly against the preponderance of the evidence. *Phillips v. State*, 101 Ark. App. 190, 272 S.W.3d 123 (2008); *Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). Here, the circuit court found that Dates violated conditions by failing to pay costs, failing to pay probation fees, failing to report to his probation officer, and "consuming" marijuana and alcohol.

The argument section of counsel's no-merit brief lists one evidentiary ruling adverse to appellant—denying his objection that a police officer could not testify to statements made by a person unavailable for appellant's cross-examination—and the adverse findings that appellant violated specific conditions of his probation. Counsel fairly discusses the evidence supporting the court's findings on the violations listed above, and he explains that any error in admitting the police officer's testimony was harmless because the evidence was otherwise sufficient to support each finding.

From our review of the record and the brief presented to us, we find substantial compliance with Rule 4-3(k)(1),¹ and we hold that there is no merit to this appeal. Accordingly, counsel's motion to withdraw is granted, and the conviction is affirmed.

Affirmed; motion granted.

PITTMAN and WYNNE, JJ., agree.

C. Brian Williams, for appellant.

No response.

¹Counsel incorrectly cites Rule 4-3(j). See *Jefferson v. State*, 2013 Ark. App. 325 (noting that Rule 4-3(k), Ark. Sup. Ct. R. 4-3(k)(1) (2012), governs the filing of no-merit appeals but Rule 4-3(j) governs the preparation of briefs for indigent appellants).