

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA CR 07-285

PAUL KAEHNE

January 16, 2008

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF  
GREENE COUNTY  
[NO. CR-04-335]

V.

STATE OF ARKANSAS

HONORABLE DAVID N. LASER,  
JUDGE

APPELLEE

AFFIRMED; MOTION TO BE RELIEVED  
GRANTED

On April 5, 2005, appellant Paul Kaehne pled guilty to the offenses of commercial burglary and theft of property, both class C felonies. He was placed on probation for five years and ordered to spend thirty days in jail, to complete 120 hours of community service, and pay a fine of \$1,000.

On March 1, 2006, the State filed a petition to revoke alleging that appellant had violated the terms of his probation by committing the new crimes of commercial burglary and theft of property, obstructing governmental operations, public intoxication, and shoplifting, and by absconding from the State of Arkansas and failing to report to his probation officer. After a hearing, the trial court revoked appellant's probation on grounds that appellant had left the State without permission, that he had failed to report to his probation officer, and that he had committed the offenses of obstructing governmental operations, public intoxication, and shoplifting. As a result, appellant was sentenced

to cumulative terms of thirty months in a regional correction facility to be followed by a suspended imposition of sentence of four years.

Pursuant to *Anders v. California*, 386 Ark. 738 (1967), and Rule 4-3(j) of the Rules of the Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. This motion was accompanied by a brief listing all adverse rulings with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The appellant was provided a copy of counsel's brief and notified of his right to file a list of points within thirty days. Appellant has chosen not to do so. From our review of the entire record, we agree that this appeal is wholly without merit, and we affirm the revocation decision and grant counsel's motion to be relieved.

There were only two adverse rulings in this case. The first was the trial court's decision to revoke appellant's probation. In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003).

There was evidence offered at the hearing that appellant did not report on April 7, 2005, for the intake session with his probation officer, but that he did finally report on April 11. His probation officer gave him a temporary permit to travel to West Virginia where his mother lived on the condition that he report back to the probation officer on May 23. Appellant reported on that date

but was not given another permit to travel out of state. Appellant failed to report in June or in any of the months thereafter. He was arrested in Ohio on February 26, 2006, and extradited to Arkansas.

Charges of commercial burglary and theft of property were pending against appellant at the time of the hearing. In this regard, appellant was accused of breaking into a car lot and stealing a vehicle, keys, and title papers. Appellant admitted at the hearing that during his probation he had pled guilty to charges of obstructing governmental operations, public intoxication, and shoplifting.

Although proof of only one violation is required, none of the trial court's findings are clearly against the preponderance of the evidence. There was ample evidence that appellant violated his probation by failing to report, by absconding from the State, and by committing the offenses of obstructing governmental operations, public intoxication, and shoplifting.

At sentencing, appellant asked that he be given twenty-four months in a regional correctional facility. Instead, the trial court sentenced appellant to thirty months in prison. This sentence was within the range of punishment for class C felonies. Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2006). There was no error.

Affirmed; motion granted.

HART and MILLER, JJ., agree.

