

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CA09-850

W.T., A JUVENILE, and BRENDA  
RICHARDS, PARENT

APPELLANTS

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** NOVEMBER 18, 2009

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT,  
[NO. JV-2007-82]

HONORABLE WILLIAM LEE  
FERGUS, JUDGE

AFFIRMED

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**ROBERT J. GLADWIN, Judge**

At issue before this court is the May 21, 2009 probation revocation of a minor in the circuit court of Craighead County. Appellant, W.T., contends that the trial court erred in denying his motion for directed verdict. We affirm the revocation.<sup>1</sup>

Appellant was serving a probationary sentence when that probation was revoked on November 10, 2008, by order of the Crittenden County Circuit Court. At that time, his probation was extended for one year, and appellant was ordered to “continue previous orders of the court.” Appellant’s case was transferred to Craighead County on February 23, 2009,

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<sup>1</sup>While appellant did not place a copy of the conditions in his addendum as is required by Rule 4-2(a)(8) (2009) and a long line of cases, *see, e.g., Taylor v. State*, 63 Ark. App. 82, 973 S.W.2d 840 (1998), the conditions are in the record, and this court may go to the record to affirm. *Law v. State*, 375 Ark. 505, 292 S.W.3d 277 (2009) (citing *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008)).

and a petition to revoke was filed there on April 29, 2009. That petition alleged that on August 29, 2008, appellant had been placed on probation for disorderly conduct. The petition recited that conditions of appellant's probation were to obey all state, federal, and local laws and to display good behavior.

Appellant was arrested on April 29, 2009, and charged with possession of a controlled substance when he brought three pills to school that were not prescribed to him. The State determined that the pills, Promethazine, were not considered a controlled substance, and, at the combined hearing on the possession charge and the revocation petition, proceeded only with the violation-of-probation charge against appellant. The evidence at the revocation hearing was that appellant offered Promethazine to another child, and that child told Amy Higgins, an employee at appellant's school. Ms. Higgins called police after speaking with appellant's probation officer, Amy Powell. Ms. Powell received the pills from the officers who collected them at the school and held them until the date of the hearing. Appellant's mother, Brenda Richards, testified that she had a prescription for Promethazine, a generic to Phenergan, taken for nausea, that had recently been filled. After she received the call from Ms. Higgins, she found her bottle empty. After questioning by the circuit-court judge, appellant admitted that he understood that the pills were not his.

Defense counsel moved for directed verdict, stating:

According to the petition, the only thing that is alleged to have happened has nothing to do with behavior. It only has to do with pills at school. There is no substantive charge. There is no proof from crime lab personnel saying that this is something he could not have. There is no proof provided that this is not aspirin. I further think the

chain of custody is faulty in this case. We don't know for sure who touched anything. The witnesses aren't here to say it was marked and properly identified. I am going to ask the court to grant a directed verdict.

The trial court granted the directed verdict on the substantive charge of possession of a controlled substance, but denied it on the violation of probation. The defense renewed its motion after it rested, and again the trial court denied the motion. The trial court then found appellant guilty of violating his probation and extended it for nine months on the same terms and conditions, fined appellant thirty-five dollars in court costs, fifty dollars for the public defender's fee, twenty dollars per month for probation fees, and ordered random drug and alcohol testing, an 8:00 p.m. curfew, as well as ninety days in detention, forty-five days suspended. Appellant filed a timely notice of appeal, and this appeal followed.

The Arkansas Juvenile Code and its provisions apply to proceedings in the juvenile court. *K.M. v. State*, 335 Ark. 85, 983 S.W.2d 93 (1998). Specifically, Arkansas Code Annotated section 9-27-339 (Repl. 2008) governs issues of probation revocation in juvenile court. *Bailey v. State*, 348 Ark. 524, 74 S.W.3d 622 (2002). A revocation hearing is held once the State files a petition seeking to revoke a juvenile's probation. See Ark. Code Ann. § 9-27-339(d). In juvenile-revocation cases, the trial court must find by a preponderance of the evidence that the juvenile violated the terms and conditions of probation. Ark. Code Ann. § 9-27-339(e).

On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003).

Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a probation revocation. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position to determine those matters. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). With this standard of review in mind, we turn to the present case.

In arguing that the trial court erred, appellant points out that the State admitted at the hearing that there was not sufficient proof that appellant possessed a controlled substance, and the charge of possession of a controlled substance was dismissed pursuant to the directed verdict by the trial court. Further, the evidence at trial proved that three unidentified pills were taken from appellant and were ultimately held by the probation officer in her unlocked desk until trial. Those pills were never identified or sent to the State Crime Lab for identification as a controlled substance. Appellant contends that the trial court's ruling is clearly against the preponderance of the evidence, as there is no evidence that appellant possessed a controlled substance. Appellant asserts that there was no evidence that it was illegal or against school rules for appellant to have the pills at school. Appellant argues that there was no evidence provided that possession of unknown pills would be a violation of the terms and conditions of his probation, and therefore, no evidence that supports a probation revocation.

The State contends, and we agree, that the trial court properly revoked appellant's probation. The State proved by a preponderance of the evidence that appellant violated the good-behavior condition of his probation by bringing someone else's prescription medication to school. Appellant's claim, that no one ever identified the pills and that the pills could have been aspirin, is wrong. At the hearing, the evidence was that appellant told Ms. Higgins and at least one student that the pills were Promethazine, not aspirin. This is consistent with appellant's mother's testimony that the pills looked like the Phenergan she had been prescribed. Her testimony was that she had recently had the prescription filled and found it empty when she got the call from appellant's school. Further, appellant admitted to the circuit judge that he understood that the pills did not belong to him. Thus, the circuit court was in a superior position to evaluate testimony, and its conclusion that appellant was in possession of medication that was not prescribed to him was not clearly against a preponderance of the evidence.

Further, the State proved that possessing the pills was a violation of appellant's probation conditions. Appellant's probation was conditioned on good behavior. Appellant took pills to school that did not belong to him and attempted to distribute them to another student. By communicating to another student that he did not care if he got caught with the pills and that he was getting ready to take them, appellant demonstrated that he knew it was wrong to bring the pills to school and that he did not care about the consequences of his

Cite as 2009 Ark. App. 773

behavior. Therefore, the State met its burden of proving by a preponderance of the evidence that appellant failed to comply with the conditions of his probation.

Affirmed.

GLOVER and BROWN, JJ., agree.