

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-928

JOSEPH RICHARD CARGILL
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 4, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-08-1393]

HONORABLE STEPHEN MERRILL
TABOR, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Joseph Richard Cargill appeals from an order of the Sebastian County Circuit Court revoking his suspended sentence for breaking or entering. In its May 14, 2010 amended petition to revoke Cargill's suspended sentence, the State alleged that Cargill failed to pay his court-ordered fees and costs, and committed the offenses of possession of marijuana, possession of drug paraphernalia, third-degree battery, and third-degree domestic assault. The trial court found that Cargill violated the terms and conditions of his suspended sentence by failing to pay his fees and costs and by committing third-degree domestic assault. Cargill was sentenced to three years in the Arkansas Department of Correction with an additional suspended imposition of sentence of seven years. On appeal, he argues that the State failed to show by a preponderance of the evidence that he violated the terms and conditions of his suspended

sentence. We affirm.

When we review a trial court's findings that an appellant violated the terms and conditions of his or her suspended sentence, those findings are upheld unless they are clearly against a preponderance of the evidence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). Evidence that is insufficient to support a criminal conviction may be sufficient to support a revocation. *Id.* We defer to the trial court's superior position to resolve matters of witness credibility and the weight to be given testimony. *McLeod v. State*, 2010 Ark. 95. The supreme court has stated that when a trier of fact has given credence to testimony, it will not reverse unless "the testimony is inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon." *Brown v. State*, 374 Ark. 341, 345, 288 S.W.3d 226, 230 (2008).

Cargill first argues that the State failed to present evidence that his failure to pay his fees and costs was willful because it only introduced the payment ledger. Cargill's argument misapprehends the law on this issue.

When the State petitions to revoke a suspended sentence, it is obligated to prove by a preponderance of the evidence that the defendant inexcusably failed to comply with his payment obligation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). However, once the State introduces evidence of nonpayment, the defendant bears the burden of going forward to offer some reasonable excuse for his failure to pay. *Hanna v. State*, 2009 Ark. App. 809, 372 S.W.3d 375. This shifting burden of production is intended to draw out the probationer's reason for

nonpayment. *Id.*

Here, Cargill testified that initially, he was unable to find the probation office and lacked the financial resources to make payments, making only enough money as a temporary worker to survive. He admitted, however, that he subsequently obtained full-time employment at McDonald's making at least a thousand dollars a month, but failed to pay his fines because he "forgot all about it." We hold that claiming to have forgotten about one's obligation to pay fees and fines, even if true, does not excuse the payment obligation. *See Britt v. State*, 2010 Ark. App. 21.

We need not address Cargill's second argument concerning the trial court's finding that he committed third-degree domestic assault. The State must prove only one violation to establish that Cargill violated the conditions of his suspended sentences. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). Accordingly, we find it unnecessary to address the other grounds for the revocation of Cargill's suspended imposition of sentence.

Affirmed.

GRUBER and MARTIN, JJ., agree.