

ARKANSAS COURT OF APPEALS

D I V I S I O N I

No. CACR 10-1332

CLIFTON SOLOMON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 7, 2011

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. CR-05-143-2-2]

HONORABLE KIRK JOHNSON,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Clifton Solomon was on probation in Miller County for three years beginning in March 2005 for committing the crime of third-degree domestic battery. Due to an earlier revocation proceeding in February 2008 in which appellant admitted violating conditions, his probation was extended until February 2011. The State filed a petition to revoke in September 2009, alleging three bases to revoke: failing to report to his probation officer, failing to pay his court-ordered financial obligations, and failing to pay probation supervision fees. After a hearing in August 2010, the trial court found by a preponderance of the evidence that appellant had violated the terms of his probation. Upon revocation, he was sentenced to six years of imprisonment. Appellant appeals, asserting that the trial court clearly erred in revoking his probation. We affirm.

A court may revoke probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably

failed to comply with a condition of probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). The State bears the burden to allege violations and prove that the defendant inexcusably failed to comply with at least one of those conditions. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003); *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). On appeal, we do not reverse unless the trial court's findings are clearly against the preponderance of the evidence. *Cheshire, supra*. Deference is given to the trial court's determinations of credibility and the weight of testimony. *Id.*

With this procedural framework, we consider this appeal. In seeking revocation in September 2009, the State filed a petition and appended the affidavit of Hardy Sheppard, appellant's probation officer. The August 26, 2009 affidavit recited that appellant failed to report for eleven months (September 2008 through July 2009) in spite of efforts to remind him of this obligation through two letters and one telephone message in three of those months. The affidavit also stated that appellant "paid nothing" toward \$2125 in court-ordered fines and costs, and he had "paid nothing" toward his \$25 monthly probation-supervision fee, at that time \$650 in arrears. Appellant was arrested in December 2009 pursuant to a revocation warrant, but he was released in the following months in order to accommodate appellant's desire to begin an inpatient drug-rehabilitation program.

The petition was heard in August 2010. Probation Officer Sheppard testified that as of the revocation hearing, he was unaware if any of the \$2125 in court ordered fines and costs had been paid. Sheppard testified that the last time he saw appellant was in August 2008. After that, he said appellant failed to report for the next eleven months. Sheppard said that after appellant was arrested in December 2009, appellant wanted to check into rehabilitation to

help with his drug problem. Sheppard said that his notes reflected appellant telephoning the drug court receptionist in May 2010 asking for contact information on Quapaw House. Sheppard said he never received any confirmation that appellant actually contacted or went to Quapaw House.

Appellant testified that “I have failed to report to my probation officer since September 2008.” He stated that his crack cocaine addiction was a primary reason for his failure to report and that he would have gone to Quapaw House if he had transportation. He said he thought the probation department would ensure his transportation when he was scheduled to arrive there in late June 2010.

At the conclusion of the hearing, the trial judge announced that he found appellant in violation of his conditions by failing to report, adding his displeasure that appellant failed to enter drug rehabilitation while he was allowed out of jail awaiting the revocation hearing. Appellant was sentenced on the underlying felony in a judgment that he now appeals.

Appellant’s argument on appeal is primarily directed toward the viability of his excuse for not presenting himself to Quapaw House and the error of the State’s failure to make that a written condition of probation. His argument misses the point. Appellant was jailed in December 2009 and released in early 2010 from jail so that he could check himself into a rehabilitation facility. This was not a condition of his probation, nor was it an alleged basis upon which to revoke. *See Costes v. State*, 103 Ark. App. 171, 287 S.W.3d 639 (2008). It was only another example of his complete disregard for any chances given him.

The State alleged and put on testimony to support its allegation that appellant failed to report as required for eleven months spanning September 2008 through July 2009.

Appellant frankly admitted his failures to report to his probation officer as alleged in the petition.¹ Whether this repeat violation was excusable due to his addiction was a matter of credibility and weight of testimony, both issues left to the trial court to resolve. *Cheshire, supra*. The trial court did not clearly err in revoking on this basis alone. We need not discuss the two alternative bases upon which the State sought to revoke appellant's probation. *Costes, supra*.

Affirmed.

GRUBER and ABRAMSON, JJ., agree.

¹Appellant's brief asserts that the written conditions of probation were never entered into evidence. At the hearing, no objection was ever raised. Indeed, appellant expressed knowledge of the terms of probation. Any argument on an evidentiary failure, raised for the first time on appeal, is barred. *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004).