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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-64

DUKE ALEXANDER APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered SEPTEMBER 14, 2011 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTH DIVISION [NO. CR 2009-0854] HONORABLE HERBERT T. WRIGHT, JR., JUDGE AFFIRMED

ROBIN F. WYNNE, Judge

Duke Alexander appeals from his conviction for failure to register as a sex offender. In his brief, he argues that the State failed to produce sufficient evidence to support his conviction. Appellant failed to preserve his argument for appellate review, and the judgment of the trial court is affirmed.

On March 5, 2009, the State charged appellant with one count of failure to register as a sex offender. Appellant was tried before the trial court, which was sitting without a jury. At trial, Curtis Van Pelt with the Little Rock Police Department testified that appellant was convicted of first-degree sexual abuse in January 1996. As a result of that conviction, appellant was required to register every six months. Detective Van Pelt testified that he went over the sex-offender acknowledgment form with appellant on July 25, 2007. Once an offender receives a notice from the Arkansas Crime Information Center (ACIC), the offender is

required to respond within ten days. Detective Van Pelt testified that appellant signed the acknowledgment, indicating that he understood all of the requirements. On July 25, 2007, appellant submitted a change of address form that listed a new address of 407 West 26th Street in Little Rock. Appellant's previous address was 2608 South Broadway in Little Rock. After Detective Van Pelt received a notice from ACIC on June 12, 2008, that appellant failed to verify his address, he went to the address on 407 West 26th but was unable to locate appellant. Detective Van Pelt obtained an arrest warrant for appellant on January 23, 2009, and appellant was arrested on that date in the area of 26th Street and Broadway.

Detective Matt Nelson with the Little Rock Police Department testified that he also explained the requirements for registration with appellant on March 20, 2008. Detective Nelson testified that appellant received a notice that he had to register in March 2008 that was sent to 407 West 26th Street. Paula Stitz, the manager of the state sex-offender registry at ACIC, testified that ACIC's system keeps a regular schedule that generates letters to the offender's last known address. The letters are sent via certified mail, and if the offender has not verified his or her address after twenty days, a letter is sent to law enforcement stating that the offender is delinquent. Appellant's verification schedule was November and May. Appellant failed to register in November 2007, and the March 2008 letter was sent out in order to give appellant a second chance to complete his November 2007 verification. Appellant was still required to register in May 2008. On May 23, 2008, a verification letter was sent to appellant via certified mail. The letter was sent to 407 West 26th Street and was returned as unclaimed.

After the letter was returned, ACIC notified the Little Rock Police Department that appellant failed to register.

At the close of the State's evidence, appellant moved for a directed verdict. The motion was denied. Darnell Williams, appellant's probation officer, testified that appellant was placed under his supervision in July or August 2007, and, since that time, appellant reported his address as 407 West 26th Street. Appellant never reported to Mr. Williams that he was living at an address on Broadway.

Appellant testified that he was paroled in 2002 and had registered as a sex offender since that time. Appellant stated that he changed his address from 2608 Broadway to 407 West 26th Street in 2005 or 2006. Appellant testified that he registered in March 2008, but that he did not receive any mail in May 2008. Appellant admitted that he signed a bail bond in January 2009 that listed his address as 2610 Broadway. Appellant denied ever failing to register on purpose.

Appellant rested his case but did not renew his motion for directed verdict. The trial court found appellant guilty and sentenced him to thirty-six months' imprisonment. Appellant has now appealed to this court.

Appellant's sole argument on appeal is that the evidence submitted at trial was insufficient to support his conviction. A motion to dismiss at a bench trial, like a motion for directed verdict at a jury trial, is considered a challenge to the sufficiency of the evidence. *Stewart v. State*, 2010 Ark. App. 9, 373 S.W.3d 387. When the sufficiency of the evidence is challenged in a criminal conviction, we review the evidence in the light most favorable to the

State and affirm if the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence that induces the mind to go beyond mere suspicion or conjecture, and that is of sufficient force and character to compel a conclusion one way or the other with reasonable certainty. *Id.*

In a nonjury trial, if a motion for dismissal is to be made, it shall be made at the close of all the evidence. Ark. R. Crim. P. 33.1(b) (2011). If the defendant moved for dismissal at the conclusion of the prosecution's evidence, then the motion must be renewed at the close of all of the evidence. *Id.* The failure of a defendant to challenge the sufficiency of the evidence at the time and manner required in Rule 33.1(b) will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. Ark. R. Crim. P. 33.1(c) (2011). Because appellant failed to renew his motion for a directed verdict at the close of all of the evidence, he has waived his argument regarding the sufficiency of the evidence to support his conviction. The judgment of the trial court is affirmed.

Even had appellant preserved his challenge to the sufficiency of the evidence, the judgment of the trial court would have been affirmed. Appellant's argument that the March 2008 letter was an administrative error by ACIC that should have relieved appellant of his responsibility to register until August 2008 was never made before the trial court and cannot be addressed on appeal. *See Price v. State*, 2011 Ark. App. 398. Furthermore, the argument is incorrect. The March 2008 letter was not an administrative error by ACIC. It was instead sent in an effort to give appellant a second chance to complete the registration he missed in November 2007. Appellant further argues that the police did not make sufficient efforts to

locate him after the May 2008 letter was returned and that he was not attempting to hide his address from police. Arkansas Code Annotated section 12-12-904(a)(1)(A)(i) (Repl. 2006) states that a person is guilty of a Class C felony who fails to register or verify registration. ACIC sent a letter to appellant via certified mail at the last address he reported, and the letter was returned as undeliverable. Appellant was well aware of the reporting procedures and had been on a May/November reporting schedule for some time. The statute does not require any level of intent by appellant. It was his responsibility to report when required to do so, and he failed. There was sufficient evidence to convict him of failure to register as a sex offender.

Affirmed.

MARTIN and HOOFMAN, JJ., agree.

James P. Clouette, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.