

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR10-846

JEROME D. TERRY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** September 14, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT,  
FORT SMITH DISTRICT  
[NO. CR2005-246]

HONORABLE STEPHEN TABOR,  
JUDGE

AFFIRMED

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## JOSEPHINE LINKER HART, Judge

This case is once more before us after we ordered rebriefing on March 9, 2011. Terry's counsel had submitted the case in no-merit format. We discovered deficiencies in the addendum as well as a failure to discuss all adverse rulings, as required by *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k). Terry's counsel has again submitted a brief, this time choosing merit-appeal format. He argues that the trial court erred in its reasoning for not considering Terry's request to extend his suspended imposition of sentence rather than revoking it. We affirm.

On December 10, 2008, Terry pleaded guilty to possession of drug paraphernalia, for which he received a five-year suspended imposition of sentence (SIS). The State petitioned to revoke Terry's SIS on February 23, 2010, alleging that he had committed the offenses of public intoxication, disorderly conduct, second-degree assault, and possession of drug paraphernalia.

At the revocation hearing, the State introduced certified copies of Terry's convictions



on the charges of public intoxication, second-degree assault, and disorderly conduct. Terry committed those offenses in Fort Smith on February 16, 2010. Fort Smith police officer David Williams, who transported Terry to a detention center after his arrest, testified that he found a “small crack pipe” in Terry’s pocket. Officer Williams stated that, based on his experience, he recognized the item as a crack pipe. The pipe itself was introduced into evidence. Although Terry testified in his own defense, he did not dispute that the pipe was a crack pipe. The trial judge found that Terry violated the terms and conditions of his SIS by committing the above-referenced offenses. He rejected Terry’s request to be kept on SIS and sentenced Terry to three years in the Arkansas Department of Correction. In pronouncing sentence, the trial judge expressed concern with Terry having committed the offense of possession of drug paraphernalia just fourteen months after pleading guilty to the same charge.

On appeal, Terry concedes that the State met its burden of proving that he violated the terms and conditions of his SIS. He argues, however, that the trial court erred in its analysis regarding sentencing. Terry states that the sole evidence regarding the possession-of-drug-paraphernalia charge consisted of the testimony of Officer Williams, who merely stated that he found a crack pipe in Terry’s pocket. Terry notes that there was nothing else to suggest that the small pipe was drug paraphernalia. It was not found with a controlled substance, and the pipe was not tested for chemical residue. We find this argument unpersuasive.

In a hearing to revoke, it is the State’s burden to prove a violation of a condition of the suspended sentence by a preponderance of the evidence; on appellate review, the trial court’s findings are upheld unless they are clearly against a preponderance of the evidence. *Hyde v.*



Cite as 2011 Ark. App. 519

*State*, 59 Ark. App. 131, 953 S.W.2d 911 (1997). Because a determination of the preponderance of the evidence turns on questions of credibility and weight to be given testimony, this court defers to the trial court's superior position. *Id.*

First we note that Officer Williams testified, without objection, that the item in question was a "crack pipe," and that he was able to recognize the item as a crack pipe because of his experience as a police officer. We cannot say that the trial court's finding that the item in question was a crack pipe, and therefore drug paraphernalia, was clearly against the preponderance of the evidence. Here, the intended use of the pipe needs no further explanation, in that such a pipe is specifically classified as drug paraphernalia by statute. *See* Ark. Code Ann. § 5-64-101(14)(A) (Repl. 2006).

As far as the decision to revoke his SIS, Terry concedes that he violated the terms and conditions of his SIS. Revoking his SIS and sentencing him to a term of years is specifically authorized by statute. Ark. Code Ann. § 5-4-309 (Repl. 2006). Accordingly, the trial judge's decision to revoke the suspended sentence was not an abuse of discretion. *Hyde, supra.*

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.

*Daniel Stewart*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Christian Harris*, Ass't Att'y Gen., for appellee.