

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-154

MARCUS AMOS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 26, 2011

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR09-1492, CR10-498]

HONORABLE DAVID LEE
REYNOLDS, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Appellant Marcus Amos appeals from the revocation of his probation. On May 4, 2010, appellant entered pleas in two separate cases. In case CR2009-1492, he pled guilty to domestic battery third, a Class A misdemeanor; in case CR2010-498, he pled guilty or no contest to domestic battering in the third degree, a Class D felony. In the misdemeanor case, he was sentenced to twelve months' probation, and the conditions of probation included that he pay court costs and fees totaling \$240 at the rate of \$25 a month. In the felony case, he was sentenced to forty-eight months' probation. His conditions of probation in that case included that he pay a fine and court costs and fees, as well as \$25 a month in probation fees.

On August 13, 2010, appellant was again charged with domestic battery. The alleged victim was his girlfriend, Calisha Forte, who had been the victim in the domestic-battery charges to which he pled guilty on May 4, 2010. The State subsequently filed a petition for probation revocation and warrant in appellant's felony case, alleging that he had violated the



terms of his probation by violating Arkansas law; failing to pay fines, fees, and court costs; failing to maintain employment; and failing to report a change of address. The State also sought revocation in appellant's misdemeanor case, alleging that he violated the conditions of his probation by failing to report, failing to pay fines and fees, and incurring new charges.

The revocation hearing was held on September 13, 2010. Dana Webb, a misdemeanor probation officer with the Faulkner County Sheriff's Office, testified that appellant failed to report for his initial consultation. In fact, Webb testified that appellant had never contacted her, nor was she able to reach appellant when she tried to call him. Webb further testified that appellant had not paid any amount of his court fees and costs as ordered.

Brenna Willis, a probation officer with the Arkansas Department of Community Correction, testified that appellant was assigned to her for his May 4, 2010 felony sentence of probation. She testified that she met with appellant on May 7, 2010, and reviewed the conditions of his probation with him; appellant signed the form listing the conditions of his probation. Willis testified that appellant currently owed \$990 in the felony-probation case, and while he had paid his \$25 probation fee each month, he had paid nothing toward his fines, fees, and court costs. She testified that appellant admitted that he did not have employment and told her that "his females take care of him." Although appellant had been shot, Willis stated that he had been "cleared" by a doctor and was not eligible for disability. Willis recounted the story (apparently learned from the police report or from the arresting officers) of appellant's latest arrest for domestic battery against Forte. Also, she explained the circumstances surrounding his purported failure to report a change in address, indicating that



she had received multiple reports from law enforcement that he was living in Chateau Village, where Calisha Forte resided, and not where he had reported living.

Appellant also testified at the hearing. While he acknowledged that he understood he was placed on misdemeanor probation and felony probation on the same day, appellant stated that he did not report to the misdemeanor probation officer because he “wasn’t aware of the probation.” He understood that he had been charged with a new domestic-battery offense against his girlfriend. Appellant testified that he had paid his probation fee every month and had “paid [his] fine to the jail.” As for his employment situation, appellant testified that he had been shot in the back, but he had recovered sufficiently that he was able to work for someone picking up rocks and cleaning around his house, earning \$50 to \$60 a day. Regarding his living situation, appellant stated that after he was not allowed to live with his mother in her subsidized housing because of his conviction, Brenna Willis told him to obtain a place in Conway, which he did. He testified that he had lived with his sister in Conway for about two weeks when he was arrested.

Calisha Forte testified that she had paid \$30 at the district court for his fines and fees. She also stated that appellant had never lived with her at her current residence; he resides with his sister in Conway. Regarding the new domestic-battery charge, she read from an affidavit stating that she, not appellant, was the problem in this case. According to her, they got into an argument about money, she hit his car with a rock, and he lightly pushed her out of the way. A man across the street called the police, and Forte claimed that when they responded she did not really talk to them and they must have assumed that the injuries they took pictures



of were caused by appellant because they “looked fresh.” She denied that the officers took the pictures because she indicated to them that appellant caused the injuries to her mouth and hand because they were fighting and he “put [her] on the ground.”

At the conclusion of the hearing, the circuit court found that appellant had violated the terms and conditions of his probation in both cases. The court sentenced him to one year’s imprisonment for the revocation of his misdemeanor probation and six years’ imprisonment for the revocation of his felony probation. Appellant filed a timely notice of appeal on September 29, 2010.

On appeal, Amos contends that the trial court’s finding that he violated the terms and conditions of his probation is clearly against the preponderance of the evidence. In probation revocation proceedings, the State has the burden of proving that appellant violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court’s decision to revoke probation unless it is clearly against the preponderance of the evidence. *Maxwell v. State*, 2009 Ark. App. 533, at 3, 336 S.W.3d 881, 882. The State need only show that the appellant committed one violation in order to sustain a revocation. *Id.*

Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation. *Jones v. State*, 355 Ark. 630, 633, 144 S.W.3d 254, 255 (2004). As to the new domestic-battery offense, appellant argues that the only evidence that he committed this new offense was probation officer Brenna Willis’s testimony. That is not the case, however, as both appellant and Forte acknowledged the new charge.



Although they attempted to present an alternate version of the events of that day, the trial court was not obliged to accept their version of the story. Even in Forte's attempt to excuse appellant's behavior, she acknowledged that he had pushed her. Appellant also contends there was insufficient proof of a violation of Arkansas law, arguing that "the State failed to provide any evidence that [he] was actually charged with violating Arkansas law and did not even indicate which statute [he] allegedly violated." Appellant testified, however, that he had a new charge for domestic battery against Forte. Thus, the court's finding that appellant had violated the conditions of his probation by committing domestic battery is not clearly against the preponderance of the evidence.

Appellant also contends that any failure on his part to pay fines cannot be considered willful because of his gunshot injury and the short time he was on probation. This argument lacks merit. Where the alleged violation is a failure to make payments as ordered, the State has the burden of proving by a preponderance of the evidence that the failure to pay was inexcusable. *Phillips v. State*, 101 Ark. App. 190, 192, 272 S.W.3d 123, 125 (2008). Once the State has introduced evidence of nonpayment, the burden shifts to the defendant to offer some reasonable excuse for his failure to pay. *Id.* Here, the State introduced evidence of nonpayment with both probation officers' testimony, and the burden shifted to appellant to offer a reasonable excuse. The trial court was not required to accept his explanation, and the court's finding that appellant failed to pay his court-ordered fines and fees is not clearly against the preponderance of the evidence.



Cite as 2011 Ark. App. 638

Because the State need only prove one violation of probation to sustain a revocation, *Maxwell, supra*, it is not necessary to address appellant's other arguments.

Affirmed.

PITTMAN and HOOFFMAN, JJ., agree.

Caroline L. Winningham, for appellant.

Dustin McDaniel, Att'y Gen., by: *Leaann J. Irvin*, Ass't Att'y Gen., for appellee.