

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-126

SHARI D. PHILLIPS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 12, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. CR-2007-1298]

HONORABLE J. MICHAEL FITZHUGH,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Shari D. Phillips appeals from the revocation of her suspended sentence. She argues that the trial court erred when it considered conduct that occurred before the imposition of the suspended sentence that was revoked and that the court erred in revoking her suspended imposition of sentence when no specific amount of restitution was ordered in the original judgment. We affirm.

Appellant pled guilty to a charge of overdraft in October 2007 in case CR-2007-1298. The judgment and commitment order entered subsequent to the plea imposed 120 months' suspended imposition of sentence and required appellant to pay restitution "in full" as well as a \$750 fine and \$150 in court costs at a rate of fifty-five dollars per month. The terms and conditions of the suspended imposition of sentence required appellant to pay the restitution, fines, and court costs ordered in the judgment. On October 20, 2009, the State filed a



petition to revoke in which it alleged that appellant failed to pay restitution as ordered in the following cases: CR-87-506, CR-90-230, CR-91-1063, CR-92-697, and CR-2007-1298. The petition further alleged that appellant failed to pay fines and court costs as ordered in the following cases: CR-87-506, CR-90-230, CR-92-697, CR-2007-1298.

At the hearing on the State's petition, B.J. Binion, an employee in the Sebastian County Prosecuting Attorney's Office financial section, testified that appellant had not paid all of the restitution ordered in cases CR-87-506, CR-90-230, CR-91-1063, and CR-92-697. With regard to case CR-2007-1298, Binion testified that appellant owed \$695 in restitution and had made no payments. The restitution ledgers for each case were admitted into evidence. Binion further testified that appellant failed to pay fines and court costs in cases CR-87-506, CR-90-230, and CR-92-697. Binion testified that in case CR-2007-1298, appellant owed a balance of \$950 in fines and court costs and had made no payments. The case profiles, which reflect the court costs and fines owed, along with the payments made, were admitted into evidence.

The trial court found by a preponderance of the evidence that appellant violated the terms of her release. The court sentenced appellant to five years' imprisonment with an additional five years' suspended imposition of sentence for the violation of the terms of her suspended sentence in case CR-2007-1298.¹ Appellant now appeals to this court.

Appellant's first argument on appeal is that the trial court erred by considering conduct that occurred prior to her conviction in case CR-2007-1298. In order to revoke a suspended

¹The State withdrew its petition to revoke with respect to the other cases.



imposition of sentence the State must prove by a preponderance of the evidence that the defendant inexcusably violated one of the terms and conditions of his or her suspended imposition of sentence. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). The State need prove only one violation of the terms and conditions for the suspended imposition of sentence to be revoked. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The only case in which appellant's suspended imposition of sentence was revoked was case CR-2007-1298. The State produced evidence that appellant was required to pay restitution, fines, and court costs as a result of her conviction in that case and that she failed to do so. Appellant does not argue that it was improper for the trial court to consider the evidence of her nonpayment in case CR-2007-1298. Appellant's argument lacks merit.

Appellant also argues that the trial court erred in revoking her suspended imposition of sentence in case CR-2007-1298 because the judgment and commitment order in that case states that she is to pay restitution in full as opposed to stating a specific amount of restitution to be paid. While the judgment does not state the specific amount of restitution to be paid, it does order appellant to pay certain amounts in fines and court costs. That part of the judgment is not challenged on appeal, and the State submitted evidence that the fines and court costs were not paid. As stated above, the State is required to prove only one violation to support the revocation of a suspended imposition of sentence. *Haley, supra*. To the extent appellant argues that the revocation violated her rights to notice and due process and that the original order of restitution in case CR-2007-1298 rendered her sentence unconstitutionally vague, appellant never raised this argument before the trial court. Constitutional arguments



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are waived on appeal if they are not made below. *Vance v. State*, 2011 Ark. 243, 383 S.W.3d 325. We decline to address appellant's argument regarding the failure of the judgment to state the specific amount of restitution to be paid and affirm the judgment.

Affirmed.

GLADWIN and GRUBER, JJ., agree.

Daniel Stewart, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.