

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR11-50

TOMMY McDOWELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 9, 2011

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. CR-2005-4253]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

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## JOHN MAUZY PITTMAN, Judge

This is an appeal from the trial court's September 29, 2010, order revoking two probationary sentences. The State had filed a petition to revoke appellant's probations asserting that he violated the conditions thereof by testing positive for marijuana and failing to report to his probation officer. After a hearing, the trial court found that appellant violated the conditions of his probations and sentenced him to four years' imprisonment. Appellant argues that the evidence was insufficient to show that he inexcusably failed to comply with the conditions of his probations. We affirm.

The court may revoke a probation at any time prior to the expiration of the probationary period upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d)



(Repl. 2006).<sup>1</sup> The trial court’s findings will be upheld on appeal unless they are clearly against the preponderance of the evidence. *Anglin v. State*, 98 Ark. App. 34, 249 S.W.3d 836 (2007). The State need only prove one violation in order to support revocation. *Beebe v. State*, 2009 Ark. App. 113.

Appellant challenges only the finding that he violated the conditions of his probation by failing to report; no argument is advanced regarding the evidence that appellant also tested positive for marijuana while on probation. Where multiple offenses are alleged as justification for revocation of probation, the trial court’s finding that revocation is justified must be affirmed if the evidence is sufficient to establish that the appellant committed any one of the offenses. *Farr v. State*, 6 Ark. App. 14, 636 S.W.2d 884 (1982). Here, appellant’s probation officer testified that appellant tested positive for marijuana during the probationary period, and appellant himself admitted that he “failed once at the drug class.” In the absence of any argument that the State failed by this evidence to demonstrate a violation of the probationary condition that appellant lead a law-abiding life, see *Beebe v. State, supra*, we must affirm. *Farr v. State, supra*.

Affirmed.

ABRAMSON and HOOFMAN, JJ., agree.

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<sup>1</sup>Subsequently repealed by Act 570 of 2011 § 11. The subsection was reenacted by section 90 of the same Act and is now codified at Ark. Code Ann. § 16-90-308(d) (Supp. 2011).