Cite as 2012 Ark. App. 105

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-420

	Opinion Delivered February 1, 2012
TROY LESTER DENSON, III APPELLANT	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [CR-2005-231]
V.	HONORABLE PHILLIP T. WHITEAKER, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

Appellant Troy Denson pled *nolo contendere* to first-degree sexual abuse and, on January 19, 2006, was sentenced to five years' probation (three of which were supervised); assessed various fees, costs, and a fine; and ordered to complete ninety hours of community service and to register as a sex offender. The State subsequently filed petitions to revoke his probation on April 25, 2006, January 18, 2007, and March 30, 2007. The first two petitions were dismissed, but the third petition was heard and resulted in the revocation of Denson's probation and his sentence to three years in the Arkansas Department of Correction. Denson appeals from the revocation, contending that the State failed to prove that he inexcusably violated a condition of his probation. We disagree and affirm.

The first petition to revoke Denson's probation was filed April 25, 2006, and alleged that he had failed to report to his probation officer; it was dismissed by order filed

September 1, 2006. On January 18, 2007, the second petition to revoke was filed, alleging that Denson failed to report for office visits as directed; that he was delinquent in supervision fees, court costs, fines, and DNA fee; and that he failed to report for his scheduled sex-offender screening. It was dismissed by order filed February 16, 2007, stating that he was "currently in compliance with his terms of probation." Finally, on March 30, 2007, the third petition to revoke was filed. It alleged that Denson had failed to report for office visits as directed; failed to register as a sex offender in Carlisle (a bench warrant was issued for his arrest); had not paid his probation fees, court costs, fine, or DNA fee; and had failed to report to Pine Bluff for his sex-offender screening as scheduled. The petition was filed in the Lonoke County Circuit Court, First Division. Apparently, however, the hearing that began on July 30, 2010, was convened in the Second Division.

John Callahan, Denson's initial probation officer, testified that Denson violated the terms and conditions of his probation from the beginning by failing to pay fees, failing to report, failing a drug test, and absconding supervision two different times. He explained that a violation report was filed because Denson did not report after his initial intake. He testified that when they "finally got him back in under supervision," they brought him to court and dismissed his revocation petition when he agreed to comply with the remainder of his conditions. He stated that Denson reported one time and no more. Before the hearing on the second petition, Callahan said that Denson agreed a second time to comply, but then attended one meeting, failed to get the sex-offender evaluation, failed to

comply with registration, and last reported to Callahan on October 13, 2006. Callahan stated that Denson was then classified as an absconder. He said that Officer Brad Coyle assumed Denson's supervision when Callahan was transferred to White County.

The State then called Officer Coyle, but before he began testifying, the trial court asked counsel to approach the bench, where the trial court informed the parties that the case had been assigned to the First Division and that nothing in the file indicated that it was ever transferred to Second Division. The trial court stated that it was willing to hear the case on assignment, but that the hearing needed to be suspended before taking any additional evidence so that an order of transfer could be obtained. The trial court directed that the hearing would reconvene in the Second Division to complete the rest of the record.

On October 22, 2010, the hearing reconvened, and the State called Thomas McBroom, who works with the Lonoke probation office. McBroom explained how information regarding probation meetings is logged into the computer, stating that Denson's case was supervised by Coyle when Callahan left. When asked if he could tell from the computer entries if Denson ever reported prior to being arrested for the revocation, Denson objected, arguing that it was hearsay and denied his sixth-amendment right to cross-examine. The trial court denied the objection based on hearsay but regarded the objection as valid concerning Denson's right to cross-examine. The State then rested its case, relying entirely on Callahan's testimony from the earlier hearing.

Denson moved for a directed verdict. The record was held open so that the court reporter could prepare a transcript of the earlier hearing for review by the trial court and by the parties. On November 8, 2010, another hearing was held at which time the trial court announced that it had reviewed the July 30 transcript. Denson argued that there had been no testimony showing any violation since the reinstatement of Denson's probation. The trial court denied the motion to dismiss. Denson's probation was revoked, and he was sentenced to three years in the Arkansas Department of Correction.

A sentence of probation may be revoked when a trial court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. *Maxwell v. State*, 2010 Ark. App. 822. The State need only show that the appellant committed one violation to sustain a revocation. *Id.* We give great deference to the trial court in determining the preponderance of the evidence because the trial judge is in a superior position to determine the credibility of witnesses and to determine the weight to be given to their testimony. *Id.* We will not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Id.*

Denson contends in this appeal that the trial court's finding that he inexcusably violated the conditions of his probation is clearly against the preponderance of the evidence. The gist of his argument is that the only evidence of probation violations came from Callahan and focused on violations as of October 2006; that the earlier petition to revoke was dismissed by order dated February 16, 2007; and that the State failed to "put

forth any evidence whatsoever regarding any infractions or violations which may or may not have occurred after January 22, 2007." We find no clear error in the trial court's determination that Denson violated the conditions of his probation.

As previously mentioned, probation officer John Callahan testified that Denson violated the terms and conditions of his probation from the beginning by failing to pay fees, failing to report, failing a drug test, and absconding supervision two different times. Callahan explained that a violation report was filed because Denson did not report after his initial intake. Callahan explained that when they "finally got him back in under supervision," they brought him to court and dismissed his revocation petition when he agreed to comply with the remainder of his conditions. He stated that Denson reported one time and no more; that after Denson agreed a second time to comply, he attended one meeting, failed to get the sex-offender evaluation, failed to comply with registration, and last reported to Callahan on October 13, 2006. Callahan testified that Denson was then classified as an absconder. He said that Probation Officer Brad Coyle assumed Denson's supervision when Callahan was transferred to White County.

It is true that the second petition to revoke Denson's probation was also dismissed by order dated February 16, 2007, and that the order does state that he was currently in compliance with the terms of his probation. However, Denson has cited no legal authority for the proposition that entry of that order wiped clean the earlier infractions and that the trial court was prohibited from considering Callahan's testimony because the

events he recounted predated the February 2007 dismissal. Moreover, we are not convinced by the argument. The evidence before the trial court established a clear pattern of violations that started from the beginning of Denson's probation. The fact that prior petitions had been dismissed because it was believed that Denson had "seen the light" and was going to start adhering to the conditions of his probation does not change the fact that he violated those conditions. Even the dismissal, or *nolle prossing*, of an indictment is not a bar to the future criminal prosecution of the same offense. *See, e.g.*, *Branning v. State*, 371 Ark. 433, 267 S.W.3d 599 (2007); *Halton v. State*, 224 Ark. 28, 271 S.W.2d 616 (1954); and *McKinney v. State*, 215 Ark. 712, 223 S.W.2d 185 (1949). Similarly, we have concluded that the dismissal of a petition for revocation does not bar the future revocation of probation based on the same violations.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.

The Lane Firm, by: *Jonathan T. Lane*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Ashley Argo Priest*, Ass't Att'y Gen., for appellee.