

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR11-1031

FRANKIE L. HATTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 18, 2012

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR10-139]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Frankie L. Hatton appeals from the revocation of his probation. He argues in his brief that the State failed to prove by a preponderance of the evidence that he violated a term or condition of his probation. We affirm.

In 2010, appellant pled guilty to a charge of failure to comply with sex-offender registration and reporting requirements—refusal to cooperate with assessment process. Appellant was sentenced to thirty-six months’ supervised probation and assessed a \$1500 fine, \$150 in court costs, and various other fees. Among the conditions of appellant’s probation were requirements that he obtain prior approval from a supervising officer before changing or staying away from his place of residence and that he be gainfully employed.

On February 2, 2011, the State filed a petition to revoke appellant’s probation in which it alleged that he (1) reported an address where he was not living; (2) failed to maintain gainful employment and moved from his reported address without prior approval; (3) lied to



his probation officer about his place of residence; (4) was delinquent in his fine and court costs payments; and (5) failed to comply with all sex-offender-registration requirements.

At the revocation hearing, Kevin Trigg, appellant's probation officer, testified that appellant had stayed at places other than his approved residence. Mr. Trigg stated that his office had been unable to make contact with appellant at his listed address. Mr. Trigg testified that he went to appellant's listed residence five times in August, September, October, and November 2010, and appellant was never there. He admitted that all of his visits occurred during office hours, except for a visit on Halloween, which occurred at either seven or eight p.m. Mr. Trigg went to the residence again on January 25, 2011, and left a card in the door instructing appellant to call him at 9:00 a.m. on January 27, 2011. Appellant did not call on January 27, and when Mr. Trigg went back to the residence on January 31, the card that he had left was still in the door. Mr. Trigg stated that this was an indication to him that no one had been at the residence for the previous six or seven days. Mr. Trigg further testified that, as of the time the revocation was filed, appellant had not paid his fines and court costs as ordered and had not reported any employment. After the revocation was filed, appellant made payments toward his fines and costs every month and reported employment. According to Mr. Trigg, there were no other violations by appellant.

At the conclusion of the State's evidence, appellant moved to dismiss the revocation petition. The trial court denied the motion. Raymond Hatton, appellant's brother, testified that appellant's trailer was heated with propane and that he provided the propane for the trailer. He stated that he filled the propane tank on a regular schedule until February 2011.



Raymond admitted that he did not go to his brother's residence often. Raymond also denied any knowledge of appellant staying with their mother. Rosie Hatton, appellant's mother, testified that appellant helped her while she was in the process of moving, and that he would stay at her house during the day.

On rebuttal, Kevin Trigg testified that appellant appeared for a visit the day the revocation was filed and initially insisted that he was staying at his listed address. However, when Mr. Trigg informed him about the card he left in his door, appellant eventually said that he sometimes stays with his mother. At the conclusion of the hearing, the trial court found by a preponderance of the evidence that appellant did not always stay at his listed address. The trial court stated that appellant was delinquent in making his required payments. The trial court also clarified in its ruling that it believed appellant was away from his address for more than one day at a time. On July 12, 2011, the trial court entered a judgment and commitment order in which it sentenced appellant to thirty-six months' imprisonment with an additional twelve months' suspended imposition of sentence. This appeal followed.

In revocation proceedings, a circuit court must find by a preponderance of the evidence that a defendant inexcusably violated a condition of probation. *Mewborn v. State*, 2012 Ark. App. 195. The appellate court will not reverse a circuit court's findings on appeal unless they are clearly against the preponderance of the evidence. *Id.* We review the sufficiency of the evidence supporting revocation by viewing the evidence in the light most favorable to the State. *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. *Denson v. State*, 2012 Ark. App. 105.

Appellant argues that the State failed to prove that he violated a term of his probation because the prohibition against “staying away” from his residence does not clearly indicate the amount of time he is allowed to be away from his residence and is therefore so vague as to fail to give him adequate notice of how to avoid violating the condition. While appellant correctly states that a court must specify the terms of probation, citing *Wade v. State*, 64 Ark. App. 108, 983 S.W.2d 147 (1998), that case involved a situation in which the defendant’s probation was revoked because he violated a condition imposed by his probation officer that was not included among the written conditions provided to him. In the instant case, the conditions that the trial court determined were violated were imposed by the trial court and were included among the written conditions provided to appellant.

Appellant also argues that the condition is not sufficiently specific. In his argument, appellant asserts that the wording of the condition makes it unclear whether being away from his residence for one night constitutes “staying away” from his residence. What appellant fails to mention, however, is that the trial court found that he spent more than one night away from his residence. In fact, Mr. Trigg’s testimony indicates that appellant spent as much as a week at a time away from his residence. In addition, Mr. Trigg testified that he was never able to make contact with appellant at his listed address and that appellant admitted to staying at his mother’s house. Given this evidence and the testimony from Mr. Trigg that appellant did not report employment and was delinquent in paying his fine and court costs prior to the



Cite as 2012 Ark. App. 267

filing of the petition to revoke his probation, we hold that the trial court's decision to revoke appellant's probation was not clearly erroneous. The judgment of the trial court is affirmed.

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.

Robert M. "Robby" Golden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.