

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 11-1103

CARRIE JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR-2009-251]

HONORABLE GARY COTTRELL,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

This is an appeal from the Crawford County Circuit Court's revocation of appellant Carrie Johnson's probation. We affirm.

Background

On June 12, 2009, appellant was charged with delivery of Xanax, a Class C felony, pursuant to Arkansas Code Annotated section 5-64-401. Appellant pleaded guilty and was placed on a three-year suspended imposition of sentence (SIS) conditioned in part upon her entering a drug-court program, complying with all of the rules and regulations of the program, and successfully completing the program. The conditions of suspension or probation provided that if she successfully completed the drug-court program, she would be allowed to expunge her conviction, but if the court revoked her SIS for violating a condition,



the court could impose a sentence of up to ten years in the Arkansas Department of Correction and a fine of up to \$10,000.

Appellant entered the Crawford County drug-court program in October 2009. On March 30, 2011, the State filed a petition to revoke appellant's SIS on the grounds that she had failed to complete drug treatment as ordered by the drug court and was therefore in violation of the terms and conditions of her SIS. After a hearing, the trial court found that appellant violated the terms and conditions of her SIS and sentenced her to two years in the Arkansas Department of Correction, to be followed by an eight-year suspended sentence. Appellant argues on appeal that the circuit court erred in granting the State's petition to revoke because there was insufficient evidence that she violated the terms and conditions of her SIS.

Standard of Review

Arkansas Code Annotated section 5-4-309(d) (Repl. 2006)¹ provides that a circuit court may revoke a SIS at any time during its pendency if the court finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of the suspension. The State bears the burden of proof but needs only to prove that the defendant committed one violation of the conditions.² When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of

¹This statute was repealed by Act of March 22, 2011, No. 570 § 11, 2011 Ark. Acts 1851, 2063. However, it applies in this case because it was in effect at the time appellant's SIS was revoked. *State v. Stephenson*, 340 Ark. 229, 9 S.W.3d 495 (2000).

²*Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).



the evidence.³ Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence.⁴ Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial court's superior position to evaluate those matters.⁵

Discussion

Ronnell Brock, a probation officer for the Crawford County drug court, testified at trial that the drug-court program operated on a strike system and that appellant received her first strike on August 18, 2010, when she failed to appear for a drug test (which is considered testing positive under the drug court's rules). Brock testified that appellant received her second strike on October 14, 2010, when she tested positive for methamphetamine and admitted to drinking alcohol, and received her third strike on January 5, 2011, after testing positive again for methamphetamine. Appellant was given the choice of being discharged from the drug-court program or going to Gateway for treatment. She chose Gateway and on January 15, 2011, was ordered to complete a ninety-day treatment program there.⁶

Brock testified that on March 28, 2011—seventy-two days into the program—appellant was discharged from Gateway and the drug-court program after she was

³*Id.*

⁴*Id.* (citing *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001)). For example, it is well settled that the Arkansas Rules of Evidence, including the rules regarding hearsay, do not apply in revocation hearings. *Cannon v. State*, 2010 Ark. App. 698, 379 S.W.3d 561.

⁵*Id.* (citing *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003)).

⁶At the revocation hearing, all parties agreed that the Gateway program Johnson had been ordered to complete was a ninety-day program.



found to be associating with Gateway clients who were smoking K2 (synthetic marijuana) and, along with another Gateway client, smuggling an illegal substance into the treatment facility. The trial court found that appellant had violated the terms and conditions of her SIS by committing three strikes and then failing to complete the ninety-day Gateway treatment program as ordered by the court.

The conditions of appellant's SIS specifically prohibited her from drinking alcohol; using, selling, distributing, or possessing any controlled substance; or associating with any person participating in or known to participate in the illegal use, sale, distribution, or possession of controlled substances. The conditions also required her to comply with all rules and regulations of the drug court. Because the evidence presented at the revocation hearing was that appellant violated not just one but all of those conditions, we cannot say that the trial court's findings were clearly against the preponderance of the evidence. Therefore, we affirm.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.

David L. Dunagin, for appellant.

Dustin McDaniel, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.