ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-815

JUSTIN DEES APPELLANT V. STATE OF ARKANSAS APPELLEE	Opinion Delivered May 16, 2012 APPEAL FROM THE POLK COUNTY CIRCUIT COURT [NO. CR 2005-51; CR 2005-81] HONORABLE J.W. LOONEY, JUDGE AFFIRMED

RITA W. GRUBER, Judge

This revocation case is before us for the second time. *See Dees v. State*, 2012 Ark. App. 85 (remanding to settle the record and supplement the addendum with the judgment-and-commitment order as well as the conditions and terms of suspended sentence). Justin Dees again contends that the State did not prove by a preponderance of the evidence that he inexcusably failed to comply with a condition of his suspended sentence. We affirm.

On August 3, 2005, Dees was sentenced to seventy-two months' probation for criminal mischief, two counts of commercial burglary, and two counts of theft of property. His probation was later converted to a suspended imposition of sentence conditioned upon his not committing any misdemeanor or felony violations of the law. The State subsequently filed a petition to revoke, alleging that Dees violated this condition. Following a hearing on April 11, 2011, the circuit court granted the revocation and imposed a sentence of seventy-two months' imprisonment.

In order to revoke probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State, which has the burden of proof, needs to prove only one violation of conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or suspended sentence. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence, *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003), and we defer to the trial court's superior position for questions of credibility and weight to be given to testimony. *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

Deputy Robert Ray Hutcherson of the Polk County Sheriff's Office testified as follows about a burglary and theft of firearms. Dees's name came up in the first quarter of 2010 through intelligence sources about the pawning of a 9 mm Bergmann Destroyer Carbine, and a pawn ticket in the crime database Leads on Line showed that Dees had pawned such a gun. According to Hutcherson, a gun collector of thirty years, these carbines were a rarity—a few hundred thousand of them were made for Spanish police before World War II, and they had appeared on the civilian market only during the last twenty years.

Hutcherson learned from Didra Garrison at the end of October or first of November 2010 that a 9 mm Bergmann Destroyer was missing from her house, located next door to the home where Dees lived with his grandmother. Hutcherson obtained from a Ft. Smith pawnshop a copy of an April 13, 2010 ticket for a 9 mm Bergmann Destroyer that had never

been redeemed and was later sold. The ticket bore Dees's name and driver's license number, and it listed his residence as his grandmother's address in Mena, which was also the address on his driver's license. Hutcherson examined Dees's previous jail files and, along with fellow officers, concluded that the signature on the pawn ticket was Dees's.

Dees contends on appeal that the State did not prove by a preponderance of the evidence that he inexcusably failed to comply with a condition of his suspended sentence. He argues that the State failed to show that the gun on the pawn ticket was the same gun as the one missing in the theft, reported months after the date that the gun had been pawned. He complains that the State did not match a serial number, the State produced no gun for the victim to identify or photo ID from the pawnshop, no one from the shop identified him as the person who pawned the gun, and there was no testimony that anyone even saw the gun. He asserts that there was no evidence of a burglary or theft and that the evidence showed only a gun was missing.

The circuit court found that Dees was a convicted felon and was not supposed to have a gun, but that he "obviously had it and pawned it." Under Ark. Code Ann. § 5-73-103(a)(1) (Repl. 2005), a person who has been convicted of a felony shall not possess or own any firearm. Here, Deputy Hutcherson's testimony and the pawnshop ticket were introduced by the State to prove that Dees, a convicted felon, possessed a gun. On this record, we cannot say that the circuit court clearly erred in finding that Dees inexcusably failed to comply with the condition that he violate no laws.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.

Randy Rainwater, for appellant.

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