

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-771

HUBERT RAY SMITH, JR.
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered June 27, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-2009-245-2]

HONORABLE ROBERT H. WYATT,
JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

ROBERT J. GLADWIN, Judge

This is a no-merit appeal from the revocation of appellant Hubert Ray Smith, Jr.'s, probation wherein he was sentenced to twelve years in the Arkansas Department of Correction. Smith's counsel has filed a motion to withdraw and a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1) (2011). Smith was provided a copy of his counsel's brief and was notified of his right to file a list of pro se points on appeal within thirty days; however, he has not raised any pro se points for reversal. We find no error, and we affirm and grant counsel's motion to be relieved.

Smith was charged by information in 2009 in Jefferson County, Arkansas, with the commission of the offenses of residential burglary and criminal mischief. He pled guilty and was sentenced to a period of thirty-six months' probation. In February 2011, the State filed a petition to revoke Smith's probation. A violation report was also filed alleging multiple



Cite as 2012 Ark. App. 411

violations of Smith's terms and conditions of probation. On April 14, 2011, Smith appeared with counsel and, after a hearing before a circuit judge, was found guilty of violating the terms and conditions of his probation. Smith was sentenced by the court to a total period of twelve years in the Arkansas Department of Correction.

The record reflects that the only adverse ruling in this case was the trial court's order revoking Smith's probation. To revoke probation or suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Supp. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley, supra*. A defendant appealing from a revocation determination has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001). 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).

In the present case, Smith's probation officer, Dametria Rochelle, testified at the revocation hearing that Smith tested positive for marijuana use while under her supervision. She also stated that appellant had an outstanding balance in regard to fees and costs owed to the sheriff's department. He had also failed to complete his community-service hours, failed to obtain his GED, and was in violation of his condition to regularly report to her office.



Cite as 2012 Ark. App. 411

Smith acknowledged that he had completed only some of his community-service hours. He testified that he had completed the necessary requirements to obtain his GED and that he had been told that he would “graduate” the following month. Defense counsel argued to the trial court that there was not any proof that Smith’s failure to make required payments was a willful act on his part.

The trial court stated that it had already given Smith opportunities in the past to “get right.” The trial court acknowledged its policy to never send anyone to the penitentiary for inability to pay, but noted that the probation officer had offered to convert his fines, fees, and costs to community service, but that he had not availed himself of that offer, which made his nonpayment willful. During the two years Smith had been placed on probation, the State had filed two petitions to revoke his probation, which resulted in continuations of probation. Yet, Smith was present at the hearing having tested positive for controlled substances, having failed to report to his probation officer for several months, and having failed to present credible proof that he had completed his community service or obtained his GED certificate. Smith admitted that he violated the terms and conditions of his probation; as such, any argument that the circuit court’s ruling was erroneous would clearly be without merit.

From our review of the record and the brief presented to us, we find compliance with Rule 4-3(k) and that the appeal is without merit. Accordingly, we affirm the circuit court’s revocation decision and grant counsel’s motion to withdraw.

Affirmed; motion to withdraw granted.

HART and MARTIN, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

No response.