

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR 11-1154

MICHAEL DALE GRIESMER  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered June 27, 2012

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[NO. CR-09-188-1]

HONORABLE PHILLIP T.  
WHITEAKER, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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### DOUG MARTIN, Judge

This is a no-merit appeal from the revocation of appellant Michael Griesmer's probation wherein he was sentenced to ten years in the Arkansas Department of Correction. Griesmer'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). Griesmer 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.

In June 2009, Griesmer was charged with one count of possession of methamphetamine, one count of possession of drug paraphernalia, and one count of possession of marijuana. On August 17, 2009, Griesmer filed a motion to transfer his case to



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drug court. The Lonoke County Circuit Court granted his motion and entered an order to that effect on August 17, 2009. Contained in that order was a statement that Griesmer “agrees to plead guilty in [post-adjudication court] to the offenses listed in his . . . Motion to Transfer to P.A.C. and understands that he . . . will be sentenced to a period of supervised probation, conditioned upon his . . . successful completion of the treatment program component of the P.A.C.” The circuit court entered a judgment and disposition order on October 30, 2009, reflecting that condition.

The same day, Griesmer signed and acknowledged a form listing the conditions of his probation. Among those conditions were that he must report to his probation officer, must not use any controlled substances, must be gainfully employed at all times, and must notify his supervising officer in advance of any change of address or employment.

Following the entry of Griesmer’s guilty plea, the circuit court entered several orders finding that Griesmer had violated the terms and conditions of post-adjudication drug court. On January 21, 2011, the State filed a petition to revoke Griesmer’s probation, alleging that he failed to report for drug court and a drug test; tested positive for the use of amphetamines on two occasions; failed to maintain gainful employment; stayed away from his approved residence without approval; was delinquent in paying his court fines; and failed to complete one year in the rehabilitation facility as ordered by the court.

The circuit court held a hearing on the State’s petition to revoke on July 25, 2011. Linda Garron, Griesmer’s first probation supervisor, testified that, as his probation officer, she



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would have gone over the terms and conditions of Griesmer's probation with him. She noted that one of the conditions of his probation was that he remain employed and that, if he left his job, he had to get permission. Garron said that Griesmer violated that condition by failing to inform her or get her permission before quitting his job.

The State also called Robert Ford, who succeeded Garron as Griesmer's probation officer. Ford testified that Griesmer failed to report to his supervisor on September 10, 2010, and failed to report for a drug test on September 14, 2010. Ford further stated that Griesmer tested positive for amphetamines on September 1 and September 10, 2010. Ford also noted that Griesmer was ordered to the Quapaw House, a rehabilitation facility, in October 2010 but had been allowed to go home prior to that time. When Griesmer failed to report on September 14, Ford initiated a home visit on September 24, 2010, and spoke with Griesmer's father, who said that he had not seen Griesmer in two weeks and did not know where Griesmer was. Ford also testified that, while Griesmer was at Quapaw House, he was given a two-day pass in December to go home to visit his family at Christmas; however, Quapaw House sent a letter to Ford stating that Griesmer did not return.<sup>1</sup> Finally, Ford testified that Griesmer had not paid his fines and fees and owed a balance of \$1735.

The circuit court denied Griesmer's motion to dismiss at the conclusion of the State's case; Griesmer rested without calling any witnesses and renewed his motion to dismiss, which

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<sup>1</sup>Griesmer's attorney raised a hearsay objection to Ford's reading from that letter, and the trial court sustained the objection, although it allowed Ford to testify to his personal knowledge about whether Griesmer returned to Quapaw House.



was again denied. The circuit court then found that Griesmer had violated the terms and conditions of his probation and sentenced him to ten years in the Arkansas Department of Correction. A judgment and commitment order was entered on July 26, 2011, and Griesmer filed a timely notice of appeal on August 25, 2011.

Counsel has now filed a no-merit brief and motion to be relieved in which he contends that the only adverse ruling was the circuit court's revocation of Griesmer's probation and that the court's ruling was supported by substantial evidence.

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (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).

As noted above, the only adverse ruling was the revocation of Griesmer's probation. The testimony described above, offered by the State at the revocation hearing, was sufficient to prove that Griesmer had violated the terms and conditions of his probation by failing to report to his probation officer, failing to report that he left his employment, failing to complete his court-ordered stay at Quapaw House, and testing positive for drugs on two occasions. Any argument that there was error in the trial court's decision to revoke



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Griesmer's probation would be without merit; accordingly, we grant counsel's motion to withdraw and affirm the revocation of Griesmer's probation.

Affirmed; motion to withdraw granted.

HART and GLADWIN, JJ., agree.

*Robert M. "Robby" Golden*, for appellant.

No response.