

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR11-1060

RAOUL JUAN LUEVANO
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CR-2006-61-1]

HONORABLE ROBIN F. GREEN,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to arson in 2006 and was placed on probation pursuant to the First Offender Act.¹ His probation was conditioned upon specific terms, including that he refrain from committing any offense punishable by imprisonment. After his term of probation expired, appellant petitioned the court to seal the record of his arson conviction. The trial court denied the motion based on a finding that appellant had pled guilty in Iowa to an offense punishable by imprisonment. This appeal followed. Appellant initially submitted an addendum that did not comply with Arkansas Supreme Court Rule 4-2(a)(8)(A)(i), and we ordered rebriefing. Appellant has submitted a complying brief that allowed us to determine that our jurisdiction was proper, and the appeal can now be addressed on the merits.

Appellant argues that the trial court erred in denying his motion to seal the record of his 2006 arson conviction, asserting that he was entitled to have the record sealed pursuant

¹Act 346 of 1975, codified at Ark. Code Ann. §§ 16-93-301 to -303 (Supp. 2011).



to the expungement provision of the First Offender Act because he fulfilled the terms and conditions of his probation. We do not agree.

Arkansas Code Annotated section 16-93-303 expressly permits the court to enter an adjudication of guilt and to proceed as otherwise provided for regular offenders upon violation of a term or condition of probation; upon fulfillment of the terms and conditions of probation, however, the defendant is to be released without court adjudication of guilt and his record is to be expunged. Here, appellant admits that, during his probationary period, he was convicted in Iowa of an offense punishable by imprisonment. However, he argues that he nevertheless fulfilled the conditions of his probation because the State chose not to revoke his probation on that basis. We do not agree. Appellant agreed to refrain from committing any offense punishable by imprisonment during his probationary period and, by his own admission, failed to fulfill that agreement. Appellant neither explains nor cites authority for the notion that a clear violation of probationary conditions must be ignored in an expungement proceeding if the violation did not result in revocation of probation. The decision of whether to immediately enter an adjudication of guilt upon violation of probationary conditions is a matter within the discretion of the trial court pursuant to the express language of the statute, and we hold that failure to institute revocation proceedings has no bearing on the question of whether a defendant fulfilled the terms and conditions of his probation under Ark. Code Ann. § 16-93-303(b).

Affirmed.

GRUBER and HOOFFMAN, JJ., agree.

Brianne Franks, for appellant.

Dustin McDaniel, Att’y Gen., by: *Rachel Hurst Kemp*, Ass’t Att’y Gen., for appellee.