

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR 11-875

DONALD WADE HAMPTON  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered August 29, 2012

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. CR-09-419]

HONORABLE JOHN N. FOGLEMAN,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**DOUG MARTIN, Judge**

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

On May 29, 2009, Hampton entered a guilty plea to one count of possession of pseudoephedrine with intent to manufacture methamphetamine, a Class D felony, and was sentenced to seventy-two months' probation. Among the conditions of his probation were the requirements that he pay court costs and fines and that he report to his probation officer as directed. On April 14, 2011, the State filed a petition to revoke Hampton's probation on the



grounds that he had failed to pay fines, costs, and fees as directed; failed to report to probation as directed; failed to pay probation fees; and failed to notify the sheriff and his probation officer of his current address and employment.

At a June 6, 2011 hearing on the State's petition to revoke, William Titsworth, Hampton's probation officer, testified that Hampton failed to report to Titsworth as required on ten occasions between June 2010 and May 2011. Titsworth also testified that he conducted a home visit on five occasions in order to get Hampton to report, and Hampton failed to report as a result of two of those home visits. Since February 2011, Titsworth said that he had seen Hampton five times for supervisory visits; after April 29, 2011, however, Hampton did not contact Titsworth, and Titsworth saw Hampton only one time, on May 23, 2011.

Hampton also testified at the hearing, asserting that he had reported to Titsworth on twelve occasions. He said, "I mean, I was reporting sometimes when I was behind on my fines even daily. So, you know, when he says ten visits, I missed ten times." Hampton also stated that there had been days when he had been working as an over-the-road truck driver, so those "could have counted as the days I missed." Hampton said he was certain, however, that he had met with Titsworth ten or twelve times, although he acknowledged that it was "not even once a month."

At the conclusion of the hearing, the circuit court found that Hampton had inexcusably violated the terms and conditions of his probation by failing to report to his probation officer as directed, noting that Hampton had admitted to failing to report. The court revoked Hampton's probation and sentenced him to thirty-six months in the Arkansas Department of



Correction in a judgment and commitment order entered on June 6, 2011. Hampton filed a timely notice of appeal on June 8, 2011.

As noted above, counsel has filed a no-merit brief contending that the circuit court's decision should be affirmed. According to Arkansas Code Annotated section 5-4-309(d) (Supp. 2009), a trial court may revoke a defendant's probation at any time prior to the expiration of the probationary period if the court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. The burden is on the State to prove a violation of a condition of probation by a preponderance of the evidence. *McPherson v. State*, 2012 Ark. App. 50; *Sanders v. State*, 2010 Ark. App. 563. On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Cargill v. State*, 2011 Ark. App. 322. Because a determination of the preponderance of the evidence turns heavily on questions of credibility and weight to be given to the testimony, the appellate courts defer to the trial court's superior position in this regard. *Id.*

A condition of Hampton's probation required that he report to his probation officer as directed. Hampton's probation officer testified that Hampton had missed ten reports, and Hampton admitted as much during his testimony. Therefore, the trial court's revocation of his probation was not clearly against the preponderance of the evidence, and we thus agree with counsel that there would be no merit to an appeal on this issue.

The only other adverse ruling came at the conclusion of the revocation hearing, when counsel asked the court whether it would be willing to give Hampton some time to "get his



children situated.” The court denied that request and remanded Hampton to the custody of the sheriff.

On appeal, counsel notes that, pursuant to Arkansas Code Annotated section 16-90-105(d) (Repl. 2006), the circuit court must, at the time sentence is announced and judgment entered, advise the defendant of his right to appeal and either fix or deny bond. Further, under section 16-90-105(e), the circuit court has the discretion to order:

- (1) The defendant released from custody on his or her own recognizance;
- (2) Another bond fixed;
- (3) The defendant to remain subject to the provisions of his or her bond if the defendant appeared at trial on bail bond; or
- (4) The defendant to the custody of the sheriff to be held without bond.

Because the court here ordered Hampton directly into the custody of the sheriff, counsel contends that the court denied bond and determined that Hampton was to be held without bond. This issue is moot, however, because Hampton failed to petition for a writ of certiorari challenging the denial of an appeal bond and thus waived this issue on direct appeal of the verdict. *See Walley v. State*, 353 Ark. 586, 608-09, 112 S.W.3d 349, 362 (2003); *Stillwell v. State*, 2010 Ark. App. 546, at 5.

Accordingly, we affirm the circuit court’s revocation decision and grant counsel’s motion to withdraw.

Affirmed; motion to withdraw granted.

HART and GLADWIN, JJ., agree.

*C. Brian Williams*, for appellant.

No response.