

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-153

NATHAN MAJOR

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 19, 2012

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CR-09-1541]

HONORABLE CHARLES E.
CLAWSON, JR., JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Nathan Major appeals from the judgment and commitment order entered upon the revocation of his probation. We affirm.

On February 4, 2010, Major pled guilty to theft by receiving (less than \$2500 but greater than \$500) (a Class C felony) and was sentenced to forty-five days in the county jail and sixty months' probation. The court imposed a fine of \$1000, assessed court costs and fees, and ordered that he pay restitution in the amount of \$970. Major signed a written list of the conditions of his probation, acknowledging the court's standard conditions plus the requirement that he serve 100 hours of community service.

On August 24, 2011, the State filed a petition for probation revocation and warrant, alleging that Major violated the terms and conditions of his probation in the following ways:



(1) failing to report as directed; (2) failing to pay fines, fees, court costs, etc.; (3) failing to report a change of address; and (4) failing to complete community-service work.

The revocation hearing was held on October 28, 2011. Probation Officer Dana Otto testified that she began supervising Major around the time his request to transfer his supervision to Pulaski County was denied on July 7, 2011. Major was informed of the decision. According to the file, a Pulaski County probation officer instructed Major to return and make contact with his probation officer in Faulkner County. Major did report to Officer Paxton on July 19, at which time he was instructed to report back on August 10. Major failed to report on that date, and Otto, who had by this time been assigned to supervise him, sent him a letter and did a home visit on August 11. Major was not present for the home visit, and a card was left there instructing him to report. According to Otto, Major never called her or reported, did not pay anything toward his fines, and completed only four hours of community service. During cross-examination, Otto testified that if Major had reported on August 10 but she had not been available, there would have been a record that he came to the office to report. In addition, if he had attempted to contact her by telephone, that too would have been noted in his file (in the "chrono"); if he had talked to the secretarial staff, they would have transferred him to her phone so that he could leave a voice mail.

Major testified that he made a request to Officer Rowlett to transfer his probation supervision to Pulaski County. During this time, he talked to a Pulaski County probation officer, but the fact that he was living in hotels due to his travel for work was an impediment to having the transfer approved. According to Major, he informed Faulkner County that his transfer request had been denied, and he was told to report back on August 10. When he



went to the probation office on that date, he was told that his probation officer, Dana Otto, was not in and he should come back on another date. Major stated that since he was not given a specific date to report back, he assumed that he was to come back within thirty days, as was the normal time period between reporting. Major testified that he had paid what he could toward his fines (\$25) and that he had performed forty hours of community service. He stated that he had struggled with homelessness during his probation and that he did not have the money to pay his fines. He testified that the address that Otto went to after he did not make his appointment in August was the one he had provided in July. He admitted that he had moved from that address without reporting it to the probation office.

At the conclusion of the evidence, the court found Major to be in violation of the terms and conditions of his probation. The court found that Major failed to pay his fines or complete his community-service hours. The court implied that Major failed to report to his probation officers as directed, stating at the hearing's conclusion that the location to which he was supposed to report remained unchanged.

At a separate sentencing hearing, the court sentenced Major to five years in the Arkansas Department of Correction. The judgment and commitment order was entered on November 7, 2011, and Major filed a timely notice of appeal on November 30, 2011.

On appeal, Major contends that the trial court erred in finding by a preponderance of the evidence that he had violated one or more conditions of probation. He argues that his failure to report on August 10, 2011, was "excusable"; his failure to make payments was not willful; and he could not be in violation of his community-service requirement without notice of specific deadlines for completing the required 100 hours.



Cite as 2012 Ark. App. 501

If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her probation, the court may revoke the probation at any time prior to the expiration of the period of probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2011). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.*

First, Major argues that his failure to report on August 10, 2011, is excusable. He points to his testimony that he did report but his probation officer was unavailable and his belief that he then had thirty days from that date to report again. Since the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Haley, supra*. Of course, the trial court was not required to believe Major's testimony, and Otto testified that if Major had in fact reported on August 10 it would be reflected in his records. Because the trial court's finding that Major failed to report to his probation officer is not clearly against the preponderance of the evidence, we affirm the revocation.

Because the State need prove only one basis for revocation, we decline to address Major's remaining arguments.

Affirmed.

HART and GRUBER, JJ., agree.

Stephen D Ralph, for appellant.

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