

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-597

LINDA GAIL SANDERS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED DECEMBER 12, 2012

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. CR09-306]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Linda Gail Sanders appeals from the May 24, 2012 revocation of her probation in Lonoke County Circuit Court. The trial court found that Sanders failed to pay her fine and costs, and she contends that the trial court erred. We affirm the revocation.

On December 7, 2009, Sanders pled guilty to theft of property and criminal trespass. The trial court placed her on sixty months' supervised probation conditioned on, among other things, her paying \$2420 in monthly installments of forty-six dollars to the Lonoke County Sheriff's Office, with a first payment of \$150 due by January 7, 2010.

On August 31, 2011, the State filed a petition to revoke Sanders's probation, asserting that she had failed to report to her probation officer as directed; tested positive for opiates on three occasions; left inpatient treatment without permission from the trial court; and failed to provide proof of paying her fine and court costs. At the hearing on May 7, 2012, Kevin



Trigg, a probation officer for the Department of Community Correction in Lonoke, testified that Sanders had not made any payments toward her fine or costs. Trigg acknowledged that Sanders was incarcerated from February 2011 to December 2011. He further stated that Sanders had made no payments since being released from prison.

The defense moved to dismiss the petition, arguing that the State failed to prove that Sanders is able to work, that she is working, or that she willfully disobeyed her requirements of paying the fine and costs. This motion was denied. The defense then introduced a letter from the Arkansas Department of Correction establishing the parameters of Sanders's incarceration. However, the trial court noted that no payments had been made since Sanders's release in December 2011.

At the sentencing hearing on May 11, 2012, the trial court found that Sanders had willfully failed to pay her fine and costs and sentenced her to three years' imprisonment, with one year suspended and credit for time served. This appeal timely followed.

In a revocation hearing, the State is obligated to prove by a preponderance of the evidence a violation of a term or condition of the defendant's probation. *Scroggins v. State*, 2012 Ark. App. 87, 389 S.W.3d 40. Where the alleged violation involves the failure to pay ordered amounts, after the State has introduced evidence of nonpayment, the burden shifts to the probationer to provide a reasonable excuse for the failure to pay. *Id.* It is the probationer's obligation to justify his failure to pay, and this shifting of the burden of production provides an opportunity to explain the reasons for nonpayment. *Id.* The State



need only prove one violation in order to support revocation. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003).

Sanders claims that the trial court erred in revoking her probation for failure to report and pay fines and court costs. We note that this argument fails to acknowledge the trial court's ruling that Sanders violated probation based on her failure to pay and not on her failure to report. Thus, Sanders's arguments regarding grounds other than failure to pay are not addressed.

Sanders argues that the State failed to present proof to establish that she inexcusably failed to pay her fine and costs. She cites *Jordan v. State*, 327 Ark. 117, 939 S.W.2d 255 (1997), and *Hanna v. State*, 2009 Ark. App. 809, 372 S.W.3d 375, for the proposition that, where the failure to pay restitution is not willful, the probationer cannot be punished by imprisonment solely for a failure to pay. Sanders contends that there was no showing by the State that her failure to pay was willful. She argues that her response to the State's allegation that she had failed to pay was that she was incarcerated and, therefore, unemployed for approximately half of the total time she was on probation. She also argues that her affidavit of indigency filed in late October 2009, two months prior to her being placed on probation, listed no current employer and noted that she was on social security disability. Thus, she maintains that the trial court's finding of willfulness should be reversed.

However, even granting Sanders every argument regarding her excuses for failing to pay subsequent to her release from incarceration, she fails to carry her burden under *Scroggins*, *supra*. The affidavit of indigency referred to in her argument and included in the record on



Cite as 2012 Ark. App. 697

appeal was denied by the trial court as a basis for a declaration of indigency. The affidavit of indigency that is included in the addendum to Sanders's brief on appeal was filed in January 2012. Thus, Sanders failed to justify nonpayment in the year preceding her imprisonment. Accordingly, the trial court's revocation is affirmed.

Affirmed.

VAUGHT, C.J., and GLOVER, J., agree.

Robert M. "Robby" Golden, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.