

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR12-573

DOUGLAS RAY MOTEN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 16, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[CR-2010-1216]HONORABLE GRAHAM PARTLOW,
JUDGEMOTION TO WITHDRAW
GRANTED; AFFIRMED**DAVID M. GLOVER, Judge**

On October 29, 2010, appellant Douglas Moten pleaded guilty to possession of a controlled substance with intent to deliver pursuant to Arkansas Code Annotated section 5-64-401(a)(1) (Repl. 2005). He was placed on probation for three years and ordered to pay fines and costs of \$1395 at the rate of \$65 per month beginning November 30, 2010. The conditions of Moten's probation included that he pay all fines and court costs assessed by the court; not violate any state, federal, or municipal law; not use or possess any illegal drug or substance; notify the sheriff and his probation officer of any change in address or employment; report to his probation officer as directed; and work at suitable employment. On November 14, 2011, the State filed a petition to revoke Moten's probation, alleging that he failed to pay his fines, costs, and fees; failed to report to his probation officer as

directed; failed to pay probation fees; failed to notify the sheriff and his probation officer of his current address and employment; possessed and used cocaine; failed to work at suitable employment; and was arrested in April 2011 for theft of property. After a May 4, 2012 revocation hearing, the trial court revoked Moten's probation and sentenced him to five years in the Arkansas Department of Correction, followed by a ten-year suspended imposition of sentence.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, Moten's counsel has filed a motion to withdraw on the ground that the appeal is wholly without merit. Counsel's motion was accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to Moten made by the trial court on all objections, motions, and requests made by either party, with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished Moten with a copy of his counsel's brief and notified him of his right to file pro se points; Moten has not filed points.

The only ruling adverse to Moten was the revocation of his probation. A circuit court may revoke a suspension or probation if it finds that the State proved by a preponderance of the evidence that the appellant inexcusably failed to comply with a condition of his probation or suspension; because of the differing burdens, evidence that is insufficient to support a criminal conviction may be sufficient to support revocation of probation or a suspended sentence. *Edwards v. State*, 2012 Ark. App. 551. The State must only prove the violation of only one of the conditions; on appeal, the appellant bears the

burden to demonstrate that the trial court's findings are clearly against the preponderance of the evidence. *Id.* The trial court's findings are given deference because determinations of the preponderance of the evidence turn heavily on questions of credibility and the weight of the evidence. *Id.*

Here, the evidence presented at the revocation hearing revealed that Moten had missed fifty-five scheduled probation visits; had not made any payment on his costs and fines; had tested positive for cocaine on April 27, 2011, the last time his probation officer had seen him; was delinquent in his probation fees; and had pleaded guilty to the offense of theft of property on June 17, 2011. Any one of these bases, standing alone, is sufficient to sustain the revocation, as the State is required to prove only one violation, and the trial court properly revoked Moten's probation on all these bases.

From a review of the record and the brief presented to this court, Moten's counsel has complied with the requirements of Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals. Counsel's motion to be relieved is granted, and Moten's revocation is affirmed.

GLADWIN, C.J., and VAUGHT, J., agree.

C. Brian Williams, for appellant.

No response.