

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR12-620

WHITNEY NICOLE ALEXANDER  
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 16, 2013

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT [NO.  
CR-06-1464B]

HONORABLE RANDY F.  
PHILHOURS, JUDGE

AFFIRMED; MOTION GRANTED

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### LARRY D. VAUGHT, Judge

In this case, Whitney Nicole Alexander's counsel has filed a no-merit brief in accord with *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2012), and asserts that, due to the low burden of proof on the State in a probation-revocation hearing, Alexander's conviction and sentence should be affirmed and counsel's motion to be relieved as counsel should be granted.<sup>1</sup> We agree.

A review of the record reveals that the sole adverse ruling to Alexander made by the circuit court was the granting of the State's petition to revoke probation. To revoke probation or a suspended sentence, the burden is on the State to prove a violation of a condition by a preponderance of the evidence, and on appellate review, the circuit court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Thompson v. State*,

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<sup>1</sup>Although Alexander was given the opportunity to file a pro se brief as permitted by Arkansas Supreme Court Rule 4-3(k)(2) (2012), she has not done so.



Cite as 2013 Ark. App. 16

342 Ark. 365, 28 S.W.3d 290 (2000). We have held that evidence insufficient to support a criminal conviction may be sufficient to support a revocation. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). Furthermore, because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the circuit court's superior position in that regard. *Id.* at 637, 144 S.W.3d at 258.

Here, the circuit court found that Alexander had inexcusably violated the terms and conditions of her probation by failing to pay her fines, costs, and fees and failing to report regularly to her probation officer as directed. We cannot say that these findings were clearly against the preponderance of the evidence, where Deborah Wiseman, an employee of the Crittenden County Sheriff's Office, testified that Alexander was assessed a \$2500 fine and costs of \$750, which she was to pay at a rate of \$75 per month beginning May 10, 2007, and Wiseman had received no payments or communication from Alexander as to why the payments were not being made. Also, Daniel Lee Scott, Alexander's probation supervisor, testified that Alexander failed to report from September 29, 2010, through the time of her sentencing hearing on April 16, 2012. We conclude that the circuit court's findings were not clearly against the preponderance of the evidence, and an appeal of this ruling would be meritless. We therefore affirm Alexander's conviction and sentence and grant counsel's motion to withdraw.

Affirmed; motion granted.

GLADWIN, C.J., and GLOVER, J., agree.

*C. Brian Williams*, for appellant.

No response.