

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR12-717

RICHARD HENDRICKS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 20, 2013

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. CR-2009-187, NO. CR-2010-137]

HONORABLE LARRY W.
CHANDLER, JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Richard Hendricks appeals an order of the Columbia County Circuit Court revoking his probation and sentencing him to fifteen years' imprisonment. He argues that the State did not sufficiently prove that he violated the conditions of his probation. We disagree and affirm.

Background

On 18 March 2010, in case number CR-2009-187, Hendricks pled guilty to committing forgery in the second degree and was sentenced to five years' probation. Six months later, on 16 September 2010, in case number CR-2010-137, Hendricks again pled guilty to the offense of forgery in the second degree and was sentenced to five years' probation. Both probation sentences contained a number of conditions, including that Hendricks not commit another criminal offense punishable by imprisonment. In case number CR-2010-137, he was specifically required to enter and successfully complete the Columbia



County Drug Court Program.

In January 2012, the State filed petitions to revoke Hendricks's probation in cases CR-2009-187 and CR-2010-137. The State alleged that Hendricks had (1) committed a criminal offense punishable by imprisonment, namely theft of property worth more than \$1,000; and (2) failed to successfully complete the Columbia County Drug Court Program. The circuit court held a revocation hearing on 27 April 2012, at which the following testimony was presented.

Jeremy May, an employee of Ronald May Welding Service, testified that in December 2011 he received a phone call from his father, Ronald May, who told him that there was someone on the business's property "loading up iron in their truck." Upon receiving the phone call from his father, Jeremy immediately drove to the welding shop, which is not fenced and had iron pipe stacked outside. Jeremy told the court that when he pulled up to the shop, no one was there, but as he drove past the shop he looked back and saw a white Chevrolet pickup pulling into the Mays' shop. Jeremy continued down the road and stopped at another shop about five buildings down; from there, he watched the white truck pull into the Mays' shop and back up to where the iron was stored. He observed a man get out of the white truck and walk to the back of it, at which time Jeremy turned around and drove toward the shop. When he got there, Jeremy explained, the man jumped in his truck and drove away. Jeremy was approximately six feet away from the man when he saw the man get back in his truck. Jeremy followed the truck to Tin Man Recycling, a nearby salvage yard. Jeremy described the truck as "a white Chevrolet S-10 with paint missing on the top."



Jeremy said that after he stopped at Tin Man to see if anyone had brought in some fourteen-inch pipe, he went back to the shop to see if anything was missing. He discovered that pieces of four-inch drill pipe and a piece of fourteen-inch pipe were missing. He explained that the fourteen-inch pipe was unusual because they had cut it into short pieces; the pipe usually came in twenty-five or thirty foot joints. Jeremy testified that they had cut the drill pipe into two-foot pieces and that around twenty pieces were missing. Jeremy also testified that he watched a surveillance video from Tin Man and saw on that video the truck that he had seen at his dad's shop "pulling in on the scales with the pipe that we had missing in the back." Because the pipe had already been melted, Jeremy could not personally identify the Mays' pipe, but he stated that the pipe on the video was approximately the same length and that there was both fourteen-inch pipe and four-inch pipe in the truck. Jeremy said that the man who came onto his property was Hendricks.

Todd Dew, a detective with the Magnolia Police Department, testified that on 14 December 2011, he received a phone call from Ronald May, who reported that a large amount of pipe had been stolen from the field beside his shop and sold at Tin Man Recycling that morning. Officer Sam Kirby was sent to Tin Man to take a report. Later Detective Dew visited Tin Man. He picked up a copy of the surveillance video and the sales receipt from the pipe that Tin Man off-loaded on December 14. Detective Dew explained that he knew the defendant, that the defendant's full name was Richard Allan Hendricks, and that the sales receipt from Tin Man bore the signature of "Richard Hendricks" and the customer identification name of Richard Allan Hendricks. The receipt reflected a purchase of 1060



pounds of ferrous long iron metal iron, for which Tin Man paid \$66.25. The detective positively identified Hendricks from Tin Man's surveillance video. He also identified Hendricks's truck as being an older model, white S-10 Chevrolet with rusty areas and missing paint.

Lynn Delaney, Hendricks's probation officer, testified that she became his probation officer in September 2010. She said that Hendricks had not successfully completed the Columbia County Drug Court Program and that he had several violations while in drug court. Delaney also explained that Hendricks had tested positive for alcohol on 2 December 2010, tested positive for cocaine on 3 January 2011, and admitted using marijuana on 28 February 2011. He also failed to report for drug screening as required. After Hendricks's admitted marijuana use, Delaney explained, he was given a chance to go to a rehabilitation facility called the Darp, but he did not successfully complete it. Hendricks was also admitted to Conquest House, another rehabilitation facility, but he did not complete that program either. Delaney also explained that Hendricks failed to appear for a 15 December 2011 court date. He was arrested on new charges that afternoon. On cross-examination, Delaney clarified that Hendricks was terminated from drug court due to his arrest, his non-completion of two rehabs, and his marijuana use.

Hendricks testified during the hearing and admitted that he sold some iron at Tin Man Recycling on 14 December 2011. However, he said that the pipe he sold was given to him by a friend, Ronnie Dees. Hendricks also admitted that he drove a white S-10; he denied that he had driven near May Welding in December.



After hearing the testimony, the court ruled from the bench:

[T]he circumstantial evidence regarding the theft of the pipe is just overwhelming that Mr. Hendricks committed that offense and further, he was dismissed from the Columbia County Drug Court, which constitutes another violation of his probation. The Court finds based on that, that in each of these cases, Mr. Hendricks violated the terms and conditions of his probation.

The court sentenced Hendricks to ten years' imprisonment in CR 2009-187 and five years' imprisonment, plus five years' suspended imposition of sentence, in CR 2010-137. The sentences were set to run consecutively, for a total of fifteen years' imprisonment. Sentencing orders were entered on 9 May 2012, and Hendricks filed timely notices of appeal in both cases.

Standard of Review

This court's standard of review in probation-revocation cases essentially asks whether a preponderance of the evidence supports the circuit court's decision that at least one condition was violated:

In a probation-revocation hearing, the State must prove its case by a preponderance of the evidence. To revoke probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. 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. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. 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 v. State, 96 Ark. App. 256, 257-58, 240 S.W.3d 615, 617 (2006) (internal citations omitted).



The Court Received Sufficient Evidence To Revoke

On appeal, Hendricks argues that there was not enough evidence to support the court's finding that he committed the offense of theft of property—primarily because the pipe that was stolen had no identifying marks and could not be positively identified as the pipe that was sold to the salvage yard. He acknowledges that he was terminated from the drug court program, but says that termination was due to his arrest for the alleged theft of the pipe. Consequently, Hendricks contends, “if the theft allegation fails, then the termination from Drug Court should not be a basis for revoking his probation.”

The State argues that a preponderance of the evidence supported the revocation of Hendricks's probation. It contends that the sales receipt and the testimony presented at the hearing establish that it was Hendricks who took the pipe from Ronald May Welding Services and then sold it to Tin Man Recycling. The State also argues that a preponderance of the evidence supports revocation on the basis of Hendricks's failure to complete the drug court program. Finally, the State disagrees that the drug court dismissal was based solely on Hendricks's arrest for theft.

We agree with the State that the circuit court received sufficient evidence to revoke Hendricks's probation. The testimony of Jeremy Mays and Officer Dew, and the sales receipt bearing Hendricks's name, support the court's conclusion that Hendricks violated his probation by committing the offense of theft of property. And under the governing statute, *see* Ark. Code Ann. § 5-36-103 (Supp. 2011), that offense is punishable by a term of imprisonment, which means Hendricks violated a condition of probation in both of his



underlying cases. The only evidence presented to the contrary was Hendricks's own testimony, which the court clearly did not believe. We defer to the court's credibility call. *Haley, supra*. Second, Delaney's testimony supplied ample evidence that Hendricks violated probation conditions when he failed to complete the drug-court program. We disagree that his termination from the drug-court program was based solely on his arrest for theft of property. The circuit court's order revoking Hendricks's probation is affirmed.

Affirmed.

VAUGHT and WOOD, JJ., agree.

David W. Talley, Jr., for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.