

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR12-778

ARTHUR BRANCH, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED FEBRUARY 27, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2006-336]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Chief Judge

Arthur Branch appeals the revocation of his suspended sentence claiming that the Crittenden County Circuit Court erred by denying his motion for continuance. We affirm.

On May 4, 2006, appellant was placed on sixty months' probation in Crittenden County pursuant to a negotiated-guilty plea to theft. A petition for revocation was filed on October 13, 2010. The petition alleged that appellant failed to meet the conditions of his suspended sentence, including having committed aggravated-residential burglary. On December 21, 2010, appellant was found guilty of violating the conditions of his suspended sentence, and a suspended sentence of sixty months was ordered.

On March 21, 2012, another petition for revocation of appellant's suspended sentence was filed alleging that he had committed, among other things, residential burglary. The petition was amended to include an allegation of second-degree criminal mischief. At the



end of the hearing on this latest revocation petition, appellant's counsel sought a continuance in order to determine if the sixty-month-suspended sentence had expired before the revocation petition was filed.

He argued that the judge who had issued the December 2010 judgment and commitment order had continued the sixty-month-suspended sentence from the original date of May 4, 2006. Therefore, counsel sought a continuance so that he might obtain a transcript from the December 2010 hearing. He argued that his recollection was that the trial judge meant for the sixty-month suspension to be a continuation, rather than a new sentence. The trial court denied appellant's request for a continuance and sentenced appellant to 180 months' imprisonment in the Arkansas Department of Correction. This appeal timely followed.

The circuit court shall grant a continuance only upon a showing of good cause and only for as long as is necessary, taking into account not only the request or consent of the prosecuting attorney or defense counsel, but also the public interest in prompt disposition of the case. Ark. R. Crim. P. 27.3 (2011). The standard of review for alleged error resulting from the denial of a continuance is abuse of discretion. *Green v. State*, 2012 Ark. 19, ___ S.W.3d ___. Absent a showing of prejudice by the defendant, we will not reverse the decision of the circuit court. *Id.*

Appellant argues that the trial court committed reversible error by denying his motion for continuance. Appellant's brief recites the colloquy held during the revocation hearing between the trial judge and appellant's counsel. Counsel stated, "Right and we have a



judgment and disposition showing sixty months, but I recall, Judge Fogleman said the sixty months is a continuation of the original sixty months and therefore the sixty would have expired in 2011.” The prosecutor responded that the judgment and conditions of probation did not reflect what appellant argued. Ultimately, the trial court ruled that the plain meaning of the judgment was sixty months prospective from the date of December 6, 2010, and that the document “speaks for itself.” Appellant now argues that he was prejudiced by the trial court’s denial because, “[i]t was not for the trial court to perceive what he thought another trial court judge meant.”

We hold that the trial court did not abuse its discretion. The trial court’s docket-sheet entry on December 6, 2010, states that “Ct finds [defendant] inexcusably violated terms of suspension by failing to pay - [defendant] sentenced to 5 years SIS.” Moreover, appellant cannot demonstrate prejudice resulting from the denial of a continuance. There was no speculation on what the trial court in the previous revocation hearing may have meant. The plain meaning of the entry is clear, and, thus, appellant failed to show he was prejudiced by the denial of his motion for continuance to obtain a copy of a hearing transcript.

Affirmed.

WYNNE and HIXSON, JJ., agree.

C. Brian Williams, for appellant.

Dustin McDaniel, Att’y Gen., by: *Ashley Argo Priest*, Ass’t Att’y Gen., for appellee.