

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-775

DEVARIOUS MOORE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 6, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2005-269A]

HONORABLE RANDY
PHILHOURS, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

On May 5, 2005, Devarious Moore pleaded guilty to selling or delivering a controlled substance and was sentenced to 120 months' suspended imposition of sentence (SIS). On April 4, 2012, the State filed a petition to revoke, alleging that Moore had violated various conditions of the suspension. After conducting a revocation hearing, the Circuit Court of Crittenden County revoked Moore's SIS and sentenced him to 300 months' imprisonment in the Arkansas Department of Correction. Moore now appeals. He contends that the circuit court erred in denying his motion for directed verdict. We affirm.

In order to revoke suspension or probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of the suspension or probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2011). The State need only prove that the defendant committed one violation of the conditions. *Hill v. State*, 2012 Ark.



App. 493. We will reverse a revocation only if the trial court's findings are clearly against the preponderance of the evidence; in determining where the preponderance of the evidence lies, we defer to the trial court's superior opportunity to assess the credibility of witnesses. *Id.*

The conditions of Moore's SIS included requirements that he pay previously ordered fines and court costs, promptly notify the probation officer and sheriff of any change of address or employment, not violate any laws, and not use or possess marijuana. The State alleged in its petition to revoke that Moore had failed to pay costs and fees as directed, failed to notify the sheriff of current address and employment, committed first-degree domestic battering and kidnapping, possessed a controlled substance with the purpose to deliver, and possessed and used marijuana.

At the conclusion of the evidence in the revocation hearing, the circuit court denied Moore's motions for a directed verdict on felony charges of kidnapping and possessing a controlled substance with the purpose to deliver. The court then found by a preponderance of the evidence that Moore had violated conditions of his SIS by testing positive for marijuana, never paying on the money owed, and possessing marijuana.

Moore's arguments on appeal challenge only the circuit court's denial of his directed-verdict motion on kidnapping and possessing with the purpose to deliver. He does not challenge the findings that he tested positive for marijuana, failed to pay as previously ordered, and possessed marijuana. We will affirm when the appellant fails to attack the trial court's independent, alternate grounds for revoking suspension. *Bovee v. State*, 2011 Ark. App. 158. Because Moore did not challenge the independent, alternate grounds that were the bases of



Cite as 2013 Ark. App. 159

the decision to revoke, we affirm.

Affirmed.

PITTMAN and WHITEAKER, JJ., agree.

C. Brian Williams, for appellant.

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