Cite as 2013 Ark. App. 214

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-810

ANGELA LYNN GASCA APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** April 3, 2013 APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [NO. 17CR-2010-673] HONORABLE GARY COTTRELL, JUDGE AFFIRMED

ROBIN F. WYNNE, Judge

Angela Gasca appeals the revocation of her suspended sentence, arguing that the State's proof of the new offense of second-degree battery was insufficient to support revocation. We affirm.

On July 13, 2011, appellant pled guilty to breaking or entering, a Class D felony, and arson (less than $500), a Class A misdemeanor. The court sentenced her to a six-year suspended imposition of sentence, with three years' supervised probation. She was also ordered to pay court costs, fees, a fine, and restitution. The court ordered her to make payments of $50 monthly beginning October 1, 2011. Appellant signed an acknowledgment of the conditions of her suspended sentence. Among those was the requirement that appellant not commit a criminal offense punishable by imprisonment.

The State filed a petition to revoke/show cause for failure to make payments as ordered, and in December 2011, appellant pled guilty to contempt. She was sentenced to thirty days in the Crawford County Detention Center with credit for thirty days served. The State filed a second petition to revoke/show cause on May 1, 2012. In this petition, the State alleged that appellant had committed the new offenses of second-degree battery on a police officer and resisting arrest.

At the revocation hearing, Mark McGraw, a corporal with the Van Buren Police Department, testified that he assisted Officer Riggs with arresting appellant on April 20, 2012. He stated that they went to a residence in response to a report that she was burglarizing an apartment or unlawfully in the apartment of another. They found her outside an apartment, and she appeared to be intoxicated. A warrant check revealed that appellant had an active warrant. Appellant ran from Officer Riggs, who tackled her. Corporal McGraw testified that appellant resisted arrest by kicking, elbowing, hitting, and pushing. Corporal McGraw stated that he delivered a kick to her shoulder and held her free arm to the best of his ability. She continued resisting once she was taken to the jail. Corporal McGraw testified that appellant did actually strike him, but he did not receive any medical treatment.

Sergeant Carrie Self-Dowty of the Crawford County Detention Center testified that she was present when appellant was brought in on April 20, 2012. She knew appellant from previous encounters. Sergeant Self-Dowty stated that appellant appeared to be intoxicated and smelled of alcohol, although she denied being intoxicated. At the threshold of the "intox cell" door, appellant attempted to "head-butt" or elbow Deputy Townsend. She was

placed in a choke hold and then taken to the floor. After that, appellant continued to be uncooperative.

Appellant moved for a directed verdict on the battery allegation, arguing that no proof was submitted that anyone had sustained an injury. The motion was denied. Appellant testified that she had a severe problem with alcohol and could not remember the night in question. She asked the court to send her to rehab, stating that she had been before and it had helped her. She admitted that when she consumed alcohol, she had a tendency to become violent. Appellant's grandmother testified that she believed appellant could become a productive member of society if she could beat her alcohol problem.

The court found that appellant had violated the condition that she not commit an offense punishable by imprisonment:

> The issue, that she's here on, is for committing a new offense of battery. It goes without saying that striking, and — well, basically, she was in a surreptitious situation in — outside an apartment, and I believe the officer testified that she was intoxicated at — at — he believed, at that time. She had a present warrant against her. She fled, and she fought, and resisted at the time of her arrest and — and continued until they got her in the jail cell.

The court revoked appellant's suspended sentence and sentenced her to four years in the Arkansas Department of Correction, with an additional two years' suspended imposition of sentence. This appeal followed.

On appeal, appellant challenges the sufficiency of the evidence supporting the finding that she committed the new offense of battery in the second degree on a police officer. She contends that there was no evidence that any person was physically injured, as required under

the battery statute.[1] The State responds, and we agree, that appellant's argument should not be addressed because she has failed to challenge an alternate, independent ground for the revocation—that she committed the offense of resisting arrest.

In a hearing to revoke a probation or suspended imposition of sentence, the State must prove its case by a preponderance of the evidence. *Blakes v. State*, 2009 Ark. App. 451, 320 S.W.3d 651. 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. *Id.* 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. *Id.*

Here, the trial court found that appellant had violated the conditions of her suspended sentence "for a multitude of reasons" and specifically found that she had resisted arrest. When a trial court expressly bases its decision on multiple, independent grounds, and an appellant challenges only one of those grounds on appeal, we can affirm without addressing the merits of the argument. *Morgan v. State*, 2012 Ark. App. 357, at 2–3 (citing *Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002)). Furthermore, where multiple offenses are alleged as justification for revocation of probation, the trial court's finding that revocation is justified must be affirmed if the evidence is sufficient to establish that the appellant committed any one of the offenses. *Doyle v. State*, 2009 Ark. App. 94, at 4, 302 S.W.3d 607, 609 (citing *Farr v. State*,

[1]A person commits battery in the second degree if the person "knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be a law enforcement officer . . . acting in the line of duty." Ark. Code Ann. § 5-13-202(a)(4)(A)(i) (Supp. 2011). "Physical injury" means the impairment of physical condition, infliction of substantial pain, or infliction of bruising, swelling, or a visible mark associated with physical trauma. Ark. Code Ann. § 5-1-102(14) (Supp. 2011).

6 Ark. App. 14, 636 S.W.2d 884 (1982)). Because appellant challenges the sufficiency of the evidence only as to the battery, and not as to her resisting-arrest violation, we affirm without addressing the sufficiency of the evidence as to the battery.

The resisting-arrest statute provides in part:

> (a)(1) A person commits the offense of resisting arrest if he or she knowingly resists a person known by him or her to be a law enforcement officer effecting an arrest.
>
> (2) As used in this subsection, "resists" means using or threatening to use physical force or any other means that creates a substantial risk of physical injury to any person.

Ark. Code Ann. § 5-54-103 (Repl. 2005). The evidence introduced at the revocation hearing was sufficient to support the finding that appellant committed the offense of resisting arrest. Therefore, we affirm the revocation of appellant's suspended sentence.

Affirmed.

WALMSLEY and BROWN, JJ., agree.

Norris Legal Drafting, by: *Lisa Marie Norris*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel Hurst Kemp*, Ass't Att'y Gen., for appellee.