

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR12-776

TRACY L. BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 8, 2013

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR-10-279]

HONORABLE PHILLIP T.
WHITEAKER, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

ROBIN F. WYNNE, Judge

Tracy Brown appeals from the revocation of his probation. His counsel has filed a motion to withdraw and a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals on the ground that the appeal is wholly without merit. Brown has not filed pro se points for reversal. We affirm the revocation and grant the motion to withdraw.

On January 18, 2011, Brown pled guilty to theft by receiving (less than \$2500 but more than \$500), a Class C felony, and was sentenced to sixty months' probation with thirty-six months supervised. He was ordered to pay a \$1500 fine, as well as court costs and various fees. He signed the conditions of his probation, which included that he report as directed to his probation officer and not use any controlled substance.



On January 26, 2012, the State filed a petition to revoke probation, alleging that Brown had violated the conditions of his probation by failing to report on five occasions, failing to report an arrest within twenty-four hours, testing positive for marijuana twice, failing to obtain gainful employment and moving from his reported address without prior approval, lying to his probation officer about his drug use, and being delinquent in paying his supervision fee, fine, and court costs.

The revocation hearing was held on June 15, 2012. Probation officer Kevin Trigg testified that he supervised Brown's probation. He stated that Brown tested positive for marijuana on February 8 and September 7, 2011. He further testified that Brown also violated his conditions of probation by moving without prior permission, failing to pay fines and court costs (outstanding balance of \$1960), and failing to attend all probation appointments. Brown testified that he had trouble getting a job because of transportation problems, but he had been working for five months now that he had transportation. He admitted to using marijuana, but he stated that he had addressed his drug use by taking a class and separating himself from the crowd with which he had used drugs.

At the conclusion of the hearing, the court ruled that Brown had willfully violated the conditions of his probation by having positive drug screens and missing appointments with his probation officer. Brown was sentenced to two years in the Community Corrections Center.

A sentence of probation may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). The State need only show that the



Cite as 2013 Ark. App. 308

appellant committed one violation to sustain a revocation. *McWilliams v. State*, 2009 Ark. App. 542, at 3, 336 S.W.3d 884, 885. This court will not reverse the revocation unless the decision is clearly against the preponderance of the evidence. *Id.*

Here, the only adverse ruling was the revocation itself. The testimony of the probation officer and Brown provided evidence that Brown had violated the terms and conditions of his probation. Based on our review of the record and counsel's brief, we hold that counsel has complied with the supreme court's requirements for no-merit briefs, and we agree that the appeal is wholly without merit.

Affirmed; motion to withdraw granted.

HIXSON and WOOD, JJ., agree.

Jonathan T. Lane, for appellant.

No response.