

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-12-1091

JUDITH ANN PIGGEE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 29, 2013

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR 2010-658]

HONORABLE DAVID L.
REYNOLDS, JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Judith Piggee appeals an order that revoked her probation and sentenced her to ten years' imprisonment. She argues that the State failed to prove that she violated the conditions of her probation. We disagree and affirm the revocation.

On 13 September 2010, the Faulkner County Circuit Court sentenced Piggee to ten years' probation on three counts of controlled-substance violations under Ark. Code Ann. § 5-64-401(a)(1) (Repl. 2005). The court also ordered Piggee to pay \$2,115 in fines, costs, and fees. Her conditions of probation included that she not "violate any local, state, or federal laws," abstain from alcohol and illegal drug use, and submit to tests that detect alcohol or drug use.

In February 2012, the State filed a petition to revoke Piggee's probation. The petition alleged that Piggee violated her probation by breaking "controlled substances laws." Also attached, as the second page of the petition, was a "Worksheet for

Revocation,” prepared by Sarah Hughs, Piggee’s probation officer, where the State alleged further probation violations—namely that she “committed the crime” of driving while intoxicated (DWI) in Conway in June 2011 and that she was arrested in January 2012 for failing to appear on the DWI charge. Hughs also noted in the worksheet that Piggee had tested positive for alcohol, THC, and cocaine several times in 2011–12.

Probation Officer Hughs testified at the June 2012 revocation hearing and reiterated that the State’s grounds for revoking Piggee’s probation were that she violated Arkansas law when she committed the crime of DWI in Conway and that she tested positive for alcohol, cocaine, and THC. Hughs testified that Piggee had admitted to a problem with alcohol, and that she believed Piggee had also admitted to drug use. Hughs stated that she had an alcohol-confession form that Piggee had signed in September 2011.

Piggee also testified at the hearing. She said that she understood the terms of her probation and knew that violating the terms and conditions could cause “serious legal problems.” Piggee asserted that she received a ticket for DUI, not DWI, in June 2011. She said that when the police arrested her she was taking her prescription medications as ordered by her doctors; she denied intoxication by any other substance. Piggee testified that she has several medical conditions requiring pain medication and other prescription drugs. Piggee also testified that she has not used any illegal substance since being placed on probation. She said that she drank alcohol “way back then” but that she had stopped drinking “from October.” On cross-examination, Piggee agreed that she understood that driving “impaired for any reason, whether illegal or legal substances, is against the law.” On redirect, Piggee said that she was not feeling intoxicated when she was pulled over

and charged with DWI, that she had taken her medicine as prescribed and that she did not deliberately break the law.

Piggee also proffered her medical records as evidence in her defense, and the court received them without objection. In turn, the State proffered a certified copy of the Faulkner County District Court docket sheets showing Piggee's 2011–12 misdemeanor convictions—including the June 2011 DWI. Piggee did not object to the district-court docket sheets, and the court received them as evidence. No other evidence was received.

During closing arguments, Piggee asked the court to dismiss the State's case because of insufficient evidence that she violated the terms of her probation. The State responded and asked the court to look at the certified copy of the DWI conviction. The court did not address Piggee's motion to dismiss. After closing arguments, the court ruled that Piggee had violated her probation's terms and sentenced her to 120 months' imprisonment.

In revocation proceedings, a circuit court must find by a preponderance of the evidence that a defendant inexcusably violated a condition of probation. *Mewborn v. State*, 2012 Ark. App. 195. We will not reverse a circuit court's findings on appeal unless they are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).

Piggee argues that the circuit court's decision is clearly against the preponderance of the evidence. She specifically argues that her 2011–12 DWI and related failure to appear convictions cannot be used to revoke her probation because she was deprived of

representation by an attorney in each of these district-court convictions. Piggee also asserts that the State did not prove that she failed a drug test based on illegal-drug use because she is on so many types of prescription medications—including narcotics. The State responds that Piggee’s arguments are not preserved and that it was not clearly against the preponderance of the evidence for the circuit court to find that Piggee committed at least one probation violation warranting revocation.

We will not address Piggee’s argument that her DWI conviction should not be used to revoke her probation because she did not raise this issue at the hearing. *Shackelford v. State*, 2013 Ark. App. 176, at 3. Piggee’s explanation about why she failed several drug tests does not require us to reverse. The State need only show that the appellant committed one violation to sustain a revocation. *Maxwell v. State*, 2009 Ark. App. 533, at 3, 336 S.W.3d 881, 882. There is ample testimony and documentary evidence that Piggee pleaded guilty to a DWI offense during her probationary period. And Piggee’s probation terms clearly prohibited her from violating Arkansas law. We therefore affirm the circuit court’s revocation of her probation.

Affirmed.

WYNNE and WHITEAKER, JJ., agree.

Caroline L. Winningham, for appellant.

Dustin McDaniel, Att’y Gen., by: *Jake H. Jones*, Ass’t Att’y Gen., for appellee.