

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-13-10

PERRY HUNTER, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 19, 2013

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR2010-458]

HONORABLE SANDY HUCKABEE,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BILL H. WALMSLEY, Judge

The Lonoke County Circuit Court found that Perry Hunter, Jr., violated the conditions of his probation and, upon revocation, sentenced him to three years' imprisonment. Defense counsel has filed a motion to withdraw on the basis that there is no merit to an appeal. We affirm the order of revocation and grant defense counsel's motion to withdraw.

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, counsel's motion to withdraw was accompanied by a brief that lists all rulings that were adverse to Hunter with an explanation as to why each adverse ruling is not a meritorious ground for reversal. Hunter was provided with a copy of counsel's brief and notified of his right to file pro se points for reversal. Hunter has not filed any points.



On August 15, 2011, Hunter pleaded guilty to second-degree battery and was sentenced to three years' probation and ordered to pay restitution, fees, and costs. A form entitled "Conditions of Suspension or Probation," dated the same day of his guilty plea, reflects that Hunter wrote his initials beside each condition. The State filed a petition to revoke on November 3, 2011, alleging that Hunter had failed to report for intake and supervision, changed his residence without notice, and made no payments toward his restitution, fees, and costs. In an amended petition, the State added to those allegations that Hunter had failed to inform his probation officer of his arrest for several drug-related offenses and that he possessed narcotics in December 2011 with intent to deliver.

At the revocation hearing, Barbara Eddy, an intake officer, testified that on August 15, 2011, she verbally instructed Hunter to report to the probation office on September 21, 2011, and provided him with her name, telephone number, address, and the date and time to report. Hunter did not report, but a woman contacted Eddy on the date he was supposed to report and explained that Hunter was working. Eddy instructed the woman to tell Hunter to report without fail on September 23. Hunter failed to report. On both occasions, Eddy followed up with letters to Hunter informing him of his violations.

Probation Officer Kevin Trigg testified that he had neither met nor been contacted by Hunter and that he had no way of contacting Hunter. Trigg confirmed that Hunter had never informed him of any arrests. Trigg also testified that Hunter had made no payments on what he owed in restitution, fees, and costs.

Hunter testified that he thought that he merely had to "[sign] the little paperwork" and



“stay out of trouble” in order to satisfy the conditions of his probation. Hunter, however, later admitted that he was directed to report for intake and knew that it was a requirement of his probation. Hunter also admitted that he was arrested for possession of cocaine and drug paraphernalia in December 2011. Hunter testified that, although he was aware that payment of restitution, fees, and costs was a condition of his probation, he had not made any payments because he had to pay a \$2500 bond to get out of jail when the State sought to revoke his probation. Hunter conceded that he had been employed for over one year in the construction business. Hunter agreed that he had moved his residence without informing his probation officer but insisted that he did not know that he was supposed to inform anyone.

In revocation proceedings, the circuit court must find by a preponderance of the evidence that the appellant inexcusably violated a condition of probation. *Holmes v. State*, 2012 Ark. App. 451. The State bears the burden of proof but need only prove that the appellant committed one violation of the conditions. *Id.* We do not reverse a circuit court’s decision to revoke unless it is clearly against the preponderance of the evidence. *Id.* This court defers to the circuit court’s superior position to determine credibility and the weight to be accorded testimony. *Williams v. State*, 2012 Ark. App. 447.

The circuit court’s determination was not clearly against a preponderance of the evidence. Eddy and Trigg testified to several violations, and Hunter admitted that he had violated the conditions of his probation. The circuit court was not required to believe Hunter’s assertions that he did not understand his obligations. *See Williams, supra.* We agree with counsel that there is no meritorious ground for reversal on the sufficiency of evidence



supporting the revocation.

The only other adverse ruling was the circuit court's denial of Hunter's motion for continuance for the purpose of hiring another attorney. A circuit court's decision to grant or deny a continuance will not be reversed absent an abuse of discretion amounting to a denial of justice. *Hamilton v. State*, 2013 Ark. App. 12. We agree with counsel that there was no abuse of discretion because the circuit court had already granted two continuances to Hunter for the same reason.

From our review of the record and the brief submitted by Hunter's counsel, we find that there has been compliance with Rule 4-3(k) and that the appeal is wholly without merit. Therefore, we affirm the order of revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

GLADWIN, C.J., and HARRISON, J., agree.

Robert M. "Robby" Golden, for appellant.

No response.