

ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-12-1106

DENNIS WILLIAMS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 26, 2013

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2011-907]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

BILL H. WALMSLEY, Judge

Appellant Dennis Williams appeals from the revocation of his probation. On March 30, 2012, appellant pled guilty to violating the Arkansas Sex Offender Registration Act. He was sentenced to twelve months' probation and ordered to pay court costs, fines, and fees and to obey the conditions of probation. On August 2, 2012, the State filed a petition to revoke appellant's probation, alleging that he had failed to pay fines, costs, and probation fees, failed to report to probation as directed, failed to notify the sheriff and his probation officer of his current address and employment, provided an invalid address to probation, failed to work regularly at suitable employment, committed another violation of the Arkansas Sex Offender Registration Act, and possessed and used alcohol.

A revocation hearing was held on September 28, 2012. Amy Peyton, who collects court-imposed fines and fees for the Crittenden County Sheriff's Office, testified that appellant

had made no payments on his fine of \$250 or costs of \$520. Kyona Stubbs, appellant's probation officer, testified that appellant had reported that he lived at 901 Division Street in West Memphis. Stubbs visited that address on April 11, 2012, spoke with appellant's mother, and learned that appellant was not living there. Stubbs testified that the home was in close proximity to two schools, and because appellant was a Level 3 sex offender, he was not allowed to live there. She put him on daily reporting, and he reported "for the most part," but there was a period when he did not report. He never reported another address. Appellant had told Stubbs that he was staying with friends, but he was not allowed to live with them because they were felons.

Stubbs testified that appellant tested positive for alcohol during his intake on April 4, 2012. He admitted to using alcohol on May 1 and June 19, 2012. Stubbs said that appellant owed \$140 in probation fees and had not made any payments. Appellant first reported employment on September 19, 2012.

Elliott Payne of the West Memphis Police Department testified that appellant had never registered as a sex offender with his department. Payne called a phone number associated with the 901 Division Street address, spoke with appellant's brother, and was told that appellant did not live there. On April 24, 2012, appellant called Payne and told him that he was living "place to place." A warrant was issued based on the allegation that appellant had not registered, and he turned himself in to the sheriff's department.

The trial court found that appellant inexcusably failed to pay his fines and court costs, failed to promptly notify his probation officer and the sheriff's department of any change of

address, failed to report to his probation officer as directed, failed to pay his probation fees, and failed to live a law-abiding life by failing to register. The trial court revoked probation and sentenced appellant to three years' imprisonment. Appellant filed a timely notice of appeal.

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, appellant's counsel has filed a no-merit brief and a motion to withdraw on the grounds that an appeal of this case is wholly without merit. Counsel's brief discusses the sole adverse ruling by the trial court, the revocation, and explains why it is not a meritorious ground for reversal. Appellant has not raised any pro se points for reversal; accordingly, the State declined to file a responsive brief.

Probation may be revoked upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of the probation. *Johnson v. State*, 2009 Ark. App. 527, 334 S.W.3d 419. On appeal of a revocation, the revocation will not be overturned unless the decision is clearly against the preponderance of the evidence. *Id.* We must give due regard to the trial court's superior position in determining the credibility of witnesses and weight to be given their testimony. *Id.*

The testimony before the trial court established multiple violations of appellant's conditions of probation. Thus, the revocation of appellant's probation was not clearly against the preponderance of the evidence, and there is no merit to an appeal. We affirm the revocation and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

Cite as 2013 Ark. App. 422

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

C. Brian Williams, for appellant.

No response.