

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-13-226

DARRON AIKENS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MARCH 12, 2014

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-06-529]

HONORABLE RANDY F.
PHILHOURS, JUDGE

AFFIRMED; MOTION GRANTED;
REMANDED WITH
INSTRUCTIONS TO CORRECT
SENTENCING ORDER

DAVID M. GLOVER, Judge

Darron Aikens pleaded guilty on June 15, 2006, to the offense of Class B felony domestic battery and was placed on six years' supervised probation. The State filed a petition to revoke Aikens's probation on February 23, 2009. After a September 16, 2011 hearing, the circuit court revoked Aikens's probation and ordered him to serve an additional three years' supervised probation. The State filed a second petition to revoke Aikens's probation on July 12, 2012. On December 18, 2012, the trial court, after a revocation hearing, found that Aikens had violated the terms of his probation, revoked Aikens's probation, and sentenced him to five years in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) (2013) of the Rules of the Arkansas Supreme Court and Court of Appeals, Aikens's counsel has filed a

motion to withdraw on the ground that Aikens's appeal is wholly without merit.¹ This motion was accompanied by an abstract and addendum of the proceedings below, including all objections and motions decided adversely to Aikens, and a brief in which counsel explains why there is nothing in the record that would support an appeal. The clerk of this court provided Aikens with a copy of his counsel's brief and notified him of his right to file a pro se statement of points for reversal; Aikens has filed no pro se points.

A sentence of probation may be revoked when a trial court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. *Denson v. State*, 2012 Ark. App. 105. The State need only show that the defendant committed one violation to sustain a revocation. *Maxwell v. State*, 2010 Ark. App. 822. The State's burden of proof in a revocation proceeding is less than that required to convict in a criminal trial, and thus evidence that is insufficient for a conviction may be sufficient for a revocation. *Newman v. State*, 2010 Ark. App. 643, 379 S.W.3d 523. Great deference is given to the trial court in determining the preponderance of the evidence, as the trial judge is in a superior position to determine the credibility of witnesses and the weight to be given to their testimony. *Denson, supra*. The appellate courts will not reverse a revocation unless the decision is clearly against the preponderance of the evidence. *Denson, supra*.

Conditions of Aikens's probation included not violating any law and not possessing marijuana, narcotics, or any illegal drug. At the revocation hearing, the State introduced a

¹This is the second time this case has come before us on appeal. In *Aikens v. State*, 2013 Ark. App. 692, we denied counsel's motion to withdraw and ordered rebriefing.

certified copy of Aikens's 2012 conviction in Marion District Court for sale or delivery of marijuana; the circuit court revoked Aikens's probation on this basis. This conviction is sufficient evidence to support the revocation of appellant's probation.

The only other adverse ruling concerns the certified copy of Aikens's conviction in district court. When the certified copy of this conviction was offered by the State, Aikens's counsel questioned whether there was a signed waiver of Aikens's right to an attorney in district court prior to his conviction. The trial court looked at the certified copy and stated that the judgment indicated that Aikens was advised of his right to an attorney and waived that right with a signed waiver. However, there is no signed waiver attached to the judgment.

In *Alexander v. State*, 258 Ark. 633, 527 S.W.2d 927 (1975), our supreme court held that, absent a knowing and intelligent waiver, an uncounseled municipal court conviction could not be used to revoke a suspended sentence, "as the net effect thereof is the actual deprivation of a person's liberty without the guiding hand of counsel." *Id.* 258 Ark. at 637, 527 S.W.2d at 930. Here, while there is not a signed waiver attached to the State's certified copy of the misdemeanor conviction, the record is not silent—there is a notation on the judgment that Aikens was advised of his right to an attorney and waived that right with a signed waiver.

We note that, in the sentencing order, the circuit court failed to check the box indicating that this was a probation revocation. In *Mahomes v. State*, 2013 Ark. App. 215, we held in a footnote that a sentencing order is to indicate if the conviction is the result of a

probation or SIS revocation; the sentencing order in this case did not do so. Therefore, although we are both affirming the revocation and granting counsel's motion to withdraw, we are also remanding to the circuit court with instructions to correct the sentencing order.

From a review of the record and the brief presented to this court, Aikens's counsel has complied with the requirements of *Anders* and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and the Court of Appeals. Counsel's motion to be relieved is granted, Aikens's revocation is affirmed, and this case is remanded with instructions to correct the sentencing order.

Affirmed; motion granted; remanded with instructions to correct sentencing order.

WALMSLEY and GRUBER, JJ., agree.

C. Brian Williams, for appellant.

No response.