

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CR-14-466

MARCUS MARTEZ SIMS  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

Opinion Delivered APRIL 22, 2015

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NO. CR-10-1218]

HONORABLE RALPH WILSON, JR.,  
JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**DAVID M. GLOVER, Judge**

In October 2010, appellant Marcus Sims entered a negotiated plea of guilty to one count of sale or delivery of a controlled substance (cocaine). Sims was sentenced to five years' incarceration, to be followed by a ten-year suspended imposition of sentence. In April 2013, the State filed a petition to revoke Sims's suspended sentence, alleging that he had failed to pay fines, restitution, costs, and fees as directed; had failed to notify the sheriff of his current address and employment; and had committed the offense of delivery of a controlled substance (cocaine). The State filed an amended petition later that month, adding two more counts of delivery of a controlled substance (cocaine), and a second amended petition in February 2014 providing more information regarding the two counts of delivery of a controlled substance that had been added in the first amended petition. After a revocation hearing on February 21, 2014, the trial court revoked Sims's suspended sentence on the bases that he had paid nothing

toward his fine and costs and that he had sold crack cocaine to a confidential informant on two separate occasions. Sims was sentenced to twelve years' incarceration, to be followed by an eight-year suspended imposition of sentence.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Arkansas Rules of the Supreme Court and Court of Appeals, Sims's counsel has filed a motion to withdraw on the grounds that the appeal is without merit.<sup>1</sup> His counsel's motion was accompanied by a brief referring to everything in the record that might arguably support an appeal, including a list of all rulings adverse to Sims made by the trial court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court furnished Sims with a copy of his counsel's brief and notified him of his right to file pro se points. He has filed no points.

In a hearing to revoke, the burden is on the State to prove a violation of a condition of the suspended sentence by a preponderance of the evidence. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). On appellate review, the trial courts findings are upheld unless they are clearly against the preponderance of the evidence. *Id.* Our appellate courts defer to the trial court's superior position to determine credibility and the weight to be accorded testimony. *Id.*

The State need only show that the defendant committed one violation to sustain a revocation. *Leal v. State*, 2014 Ark. App. 673. Therefore, we will only discuss Sims's failure

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<sup>1</sup>We previously ordered rebriefing because the two amended revocation petitions and the conditions of Sims's probation were not included in the addendum. *Sims v. State*, 2015 Ark. App. 11. These deficiencies have now been corrected.

to pay fines, restitution, costs, and fees. Where the alleged violation is a failure to make court-ordered payments, it is the State's burden, by a preponderance of the evidence, to prove that the failure to pay was inexcusable. *Phillips v. State*, 101 Ark. App. 190, 272 S.W.3d 123 (2008). Once the State introduces evidence of nonpayment, a defendant then bears the burden of going forward with some reasonable excuse for his failure to pay. *Id.*

At the revocation hearing, Amy Peyton (an employee for the Crittenden County Sheriff's Office who is responsible for collecting and recording all fines and fees for the sheriff's department) testified that the costs and bill statement for Sims's 2010 conviction was \$895 and no payments had been made. Sims testified on his own behalf, stating that he was currently working at Burger King in Little Rock and Wal-Mart in North Little Rock, and that prior to that, he had worked at Southland Greyhound Park and Salvation Army. He explained that when he was accused of the current charges, he had to bond out of jail, which put him in debt, but he planned to pay off his debts when he received his income-tax refund.

The trial court did not err in revoking Sims's suspended sentence on this basis. By Sims's own admission, he was working two jobs, but he had made no payments on his financial obligations to the court. Though Sims testified that he planned to use his income-tax refund to pay his costs, fines, and fees, it did not excuse his failure to make regular monthly payments for over two years.

In addition to the sufficiency of the evidence, Sims's counsel noted all other rulings adverse to Sims at the revocation hearing and discussed why each adverse ruling did not constitute reversible error. There were three evidentiary objections by Sims's counsel—all

overruled by the trial court during West Memphis police officer Brent Bradley's testimony concerning the undercover drug buys made from Sims. Because there was a separate, independent basis for revoking Sims's suspended sentence—failure to pay his fines, costs, and fees—none of the evidentiary objections regarding the drug buys constitutes reversible error in revoking Sims's suspended sentence.

The revocation of Sims's suspended sentence is affirmed, and counsel's motion to be relieved is granted.

Affirmed; motion to withdraw granted.

KINARD and HIXSON, JJ., agree.

*S. Butler Bernard, Jr.*, for appellant.

No response.