

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-14-834

COLTON GENE SLUSHER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JUNE 17, 2015

APPEAL FROM THE JOHNSON
COUNTY CIRCUIT COURT
[NOS. CR-12-104, CR-12-111]

HONORABLE WILLIAM M.
PEARSON, JUDGE

AFFIRMED; MOTION GRANTED

DAVID M. GLOVER, Judge

Appellant Colton Gene Slusher entered negotiated pleas of guilty in August 2012 to possession of drug paraphernalia, a Class D felony (CR-2012-104), and possession of a controlled substance with intent to deliver (marijuana), a Class C felony (CR-2012-111). He was sentenced to three years' incarceration for each offense, to be served concurrently, to be followed by an additional three-year suspended imposition of sentence for possession of drug paraphernalia and a four-year suspended imposition of sentence for possession of a controlled substance with intent to deliver. Conditions of his suspended sentences included that Slusher live a law-abiding life.

On March 10, 2014, the State filed a petition to revoke Slusher's suspended sentences, alleging that he had failed to pay fines and fees and had committed a criminal offense

punishable by imprisonment.¹ After a hearing, the trial court revoked Slusher's suspended sentences and sentenced him to six years in the Arkansas Department of Correction on each offense, to be served concurrently, as well as an additional three-year suspended imposition of sentence for the offense of possession of a controlled substance with intent to deliver.

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, Slusher's counsel has filed a motion to withdraw on the grounds that the appeal is wholly without merit. This 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 Slusher 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 Slusher with a copy of his counsel's brief and notified him of his right to file pro se points; he has not filed any points.

In order to revoke probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Holmes v. State*, 2012 Ark. App. 451. 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 court's findings are upheld unless they are clearly against the

¹The State also alleged that Slusher had violated the terms of his suspended sentences in CR-2009-202A, but the trial court determined that it did not have jurisdiction in that case. The State does not cross-appeal that finding.

preponderance of the evidence. *Id.* Because of the lower burden of proof, evidence that is insufficient to support a criminal conviction may be sufficient for the revocation of a suspended sentence. *Knotts v. State*, 2012 Ark. App. 121. The appellate courts defer to the trial court's superior position to determine credibility and the weight to be accorded testimony. *Stultz, supra*.

At the revocation hearing, Becky Nichols, Slusher's probation/parole officer, testified that Slusher was paroled from prison on December 12, 2013, and two days later he committed the offense of battery and was also charged later that month with aggravated assault. Slusher admitted on cross-examination that he had been convicted of two misdemeanors in district court in December 2013. This testimony provides sufficient evidence to support the revocation of Slusher's suspended sentences.

Other than the revocation of his suspended sentences, there was only one other ruling adverse to Slusher. The trial court overruled a hearsay objection from Slusher's counsel during the testimony of Allie Wilkerson, a sergeant at the Johnson County Detention Center, when she testified about where a fire had begun in the detention center. This adverse ruling cannot form a meritorious basis for reversal of the revocation of Slusher's suspended sentences. The rules of evidence, including the hearsay rule, are not strictly applicable in revocation proceedings. *Richards v. State*, 2013 Ark. App. 15.

From a review of the record and the brief presented to this court, Slusher's counsel has complied with the requirements of Rule 4-3(k) of the Arkansas Rules of the Supreme Court and the Court of Appeals. The revocation of Slusher's suspended sentences is affirmed, and

counsel's motion to be relieved is granted.

Affirmed; motion granted.

HARRISON and KINARD, JJ., agree.

John C. Burnett, for appellant.

No response.