

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 10-158

ERIC LAVELL MURRY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 17, 2010

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2005-615]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

On November 7, 2005, Eric Lavell Murry¹ entered a plea of guilty to sale of cocaine, felon in possession of a firearm, and theft by receiving. He received a ten-year suspended sentence on each count and was ordered to pay \$500 in court costs. On July 31, 2009, the State filed a petition to revoke Murry's suspended sentence on his previous drug conviction, alleging that he violated the terms of the suspended sentence by failing to pay costs and fees as directed and by being charged with burglary, theft, and first-degree criminal mischief. The revocation hearing was held on November 6 and 16, 2009. After the hearing, the Crittenden County Circuit Court revoked Murry's suspended imposition of sentence on both grounds listed in the petition and sentenced him to thirty-years' imprisonment at the Arkansas Department of Correction.

¹The appellant's name is listed as Eric Lavelle Murray in his opening brief. However, as the pleadings and record below refer to the appellant as Eric Lavell Murry, we will use that spelling for purposes of this appeal.

Murry appeals the revocation, claiming that there was insufficient evidence on the burglary, theft, and criminal-mischief charges to support revocation.

To revoke a suspended sentence, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions in order to sustain a revocation. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State's burden is not as great in a revocation hearing as it is in a criminal proceeding; therefore, evidence that is insufficient for a criminal conviction may be sufficient for revocation. *Bedford v. State*, 96 Ark. App. 38, 237 S.W.3d 516 (2006). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003). Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial court's superior position to resolve those matters. *Peterson, supra*.

Here, after hearing evidence implicating Murry in the burglary, theft, and criminal mischief at an apartment complex, the trial court found that Murry violated Arkansas law in contravention of a condition of his suspended sentence. Murry challenges this finding, arguing that there was insufficient evidence presented to connect him with those crimes, and, thus, revocation was improper. However, Murry fails to make any argument relating to the additional and independent ground for revocation relied upon by the trial court—his failure to pay court

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costs and fees. Because he attacks only one of the grounds upon which the revocation of his suspension was based, we need not reach the merits of his argument. When a trial court expressly bases its decision on multiple, independent grounds, and an appellant challenges only one of those grounds on appeal, we affirm without addressing the merits of the argument. *See Pugh v. State*, 351 Ark. 5, 89 S.W.3d 909 (2002). The State needed to prove only one ground for revocation. Thus, Murry's failure to challenge the trial court's alternative ground for revocation is fatal to his appeal.

Affirmed.

HENRY and BROWN, JJ., agree.