

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-89

LAKEDRIN MILLS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEES

OPINION DELIVERED JANUARY 12, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2005-450R]

HONORABLE RALPH EDWIN
WILSON, JR., JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

ROBERT J. GLADWIN, Judge

This is a no-merit appeal from the revocation of appellant's probation. Appellant Lakedrin Mills was convicted of criminal use of a prohibited weapon and sentenced to four years' probation, subject to certain conditions, on December 5, 2005. The State filed a petition for revocation on December 6, 2007, alleging that appellant had violated those conditions by failing to pay his fines and costs, using marijuana during his probation, and failing to report to his probation officer. The circuit court revoked his probation and sentenced him to thirty-six months' imprisonment. A hearing on appellant's motion to reconsider was held on November 2, 2009, and the circuit court denied the motion.

Appellant filed a timely notice of appeal on November 2, 2009, and his counsel filed a no-merit brief and motion seeking to withdraw pursuant to *Anders v. California*, 386 U.S.

738 (1967), and Rule 4-3(k) (2010) of the Rules of the Arkansas Supreme Court and Court of Appeals. Counsel's brief complies with *Anders* and Rule 4-3(k) and discusses all matters in the record that might arguably support an appeal, including all adverse rulings and a statement as to why counsel considers each point raised as being incapable of supporting a meritorious appeal. The only adverse rulings were the ultimate finding that appellant violated his conditions and the denial of appellant's motion for reconsideration. Appellant was provided a copy of his counsel's brief and was notified of his right to file a list of points on appeal within thirty days. Appellant has not raised any pro se points for reversal. Accordingly, the State declined to file a responsive brief.

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. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Id.* When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* Since 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 judge's superior position. *Id.*

At the hearing on the State's petition to revoke, the State called Debra Wiseman, an

employee of the Crittenden County Sheriff's Office, who testified that appellant had not paid any of his fines and costs. Probation Officer Daniel Scott testified that appellant had failed to report as directed, had tested positive for drug use three times, and had admitted using marijuana during probation. Appellant testified that he lost his job shortly after his conviction and that he used marijuana on at least one occasion during his probation. The State contends that no objections were made by appellant's counsel during the hearing and there was sufficient evidence to revoke appellant's probation. Appellant's admission to violating his probation by using illegal drugs was sufficient to revoke. *See Haley, supra.*

The only other adverse ruling by the circuit court was its denial of appellant's motion for reconsideration. Appellant argued that the arrest warrant for the probation revocation was stale because it had been pending for eighteen months. However, no witnesses were called to testify as to appellant's address and location during that time frame, nor was there any testimony regarding any attempts, or the lack thereof, by law enforcement to serve the warrant. When making an argument that an arrest warrant is stale, the defendant must present facts and evidence as to whether the delay was reasonable or not. *See Richmond v. State*, 326 Ark. 728, 934 S.W.2d 214 (1996). Because there was no evidence before it to support appellant's argument, the circuit court did not err in denying appellant's motion for reconsideration.

Accordingly, any appeal would be wholly without merit. Thus, we grant counsel's motion to withdraw and affirm the revocation.

Cite as 2011 Ark. App. 19

Affirmed; motion to withdraw granted.

PITTMAN and ABRAMSON, JJ., agree.