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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 09-1391

	Opinion Delivered JANUARY 12, 2011
WALTER SHAWN HENSON APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. CR-08-272]
V.	HONORABLE J. MICHAEL FITZHUGH, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED; MOTION TO BE RELIEVED AS COUNSEL GRANTED

JOHN B. ROBBINS, Judge

Appellant Walter Shawn Henson was on a suspended imposition of sentence for a drug-related crime in Sebastian County when the State filed a petition to revoke. The alleged violations were that he was currently charged with two counts of attempted second-degree battery, resisting arrest, and fleeing, committed on the afternoon of August 10, 2009. After a hearing, the trial court found by a preponderance of the evidence that Henson violated the terms of his suspension. He was sentenced to a six-year prison term to be followed by two years of suspended imposition of sentence. His counsel filed a timely notice of appeal from the judgment of conviction resulting from the revocation.

Appellant's counsel subsequently filed a motion to be relieved and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(k) (2010), asserting that the appeal is wholly without merit. Appellant was served with his counsel's motion and brief by certified mail, return receipt requested, at the prison where he was being held. Appellant has not filed pro se points for reversal in this matter. The State chose not to file an appellee's brief. After an examination of this appeal under the proper standards, we affirm appellant's revocation and grant counsel's motion to be relieved.

The only adverse ruling in this appeal concerned the decision to revoke his suspended imposition of sentence. Any argument on the sufficiency of the evidence to revoke would be wholly frivolous.

In order to sustain a revocation, the State must demonstrate that the defendant inexcusably failed to comply with at least one condition of the suspension or probation terms. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). In appealing a revocation, the defendant must demonstrate that the trial court's finding of a violation is clearly against the preponderance of the evidence. *Haley*, *supra*. Since the preponderance of the evidence turns heavily on credibility and the weight of the evidence, we give deference to the trial court's superior position on those decisions. *Id.* Evidence that would be insufficient for a criminal conviction may be sufficient for a revocation because of the differing burdens of proof. *Id.*

Here, the evidence included the testimony of a Fort Smith police officer, Austin Collins, who investigated a call that a vehicle was being driven through a residential yard. Collins observed the vehicle, driven by appellant, inching through a yard, and as Collins approached in his patrol vehicle, appellant continued to drive along the sidewalk. Collins initiated his flashing lights and siren, but appellant did not stop. Instead, appellant accelerated his vehicle, fleeing for several blocks through another residence's front and back yard. Another officer joined the attempt to make the car stop. Appellant lost control of the vehicle, crashing into a fence associated with the Ice House bar.

Collins approached the vehicle and attempted to reach inside to remove the keys, but appellant resisted by swatting and throwing punches at the officer. The other officer arrived on scene and used a taser more than once in an attempt to subdue him. Nonetheless, appellant reached for a bottle inside his vehicle and attempted unsuccessfully to break it on the console, threw the bottle at Collins and hit the radio on Collins's hip, kicked his own windshield out, and physically fought to keep the officers from taking him from the car. Collins believed appellant was intoxicated.

Appellant testified that he had ingested methamphetamine but that he did not resist arrest. Appellant said he was going to the Ice House because his mother, Bonnie Henson, worked there. Appellant contended that although the officers might have wanted to stop him, they should have gone about it in a different manner.

Bonnie testified that she came out of the Ice House when she heard the commotion. She said she saw her son "accidentally" hit one of the officers with a pop bottle, but she said she did not see him fighting the officers.

On this evidence, the trial judge found that appellant had violated the terms of his suspension, and appellant was sentenced accordingly. There is no issue of arguable merit here. Appellant essentially conceded that he was fleeing. Appellant's counsel conceded that the State had probably proved a violation of the broad suspension agreement. Because there was a preponderance of evidence to support at least one inexcusable violation—fleeing, resisting arrest, or battery—we affirm the revocation and relieve counsel from representation.

Affirmed; motion to be relieved as counsel granted.

GRUBER and BROWN, JJ., agree.