

## ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 10-551

SEAN E. BEAGLES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 12, 2011

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT [NOS. CR- 03-836,  
CR-06-1067, CR-08-1448]

HONORABLE STEPHEN TABOR, JUDGE

AFFIRMED; MOTION TO  
WITHDRAW GRANTED

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**JOHN B. ROBBINS, Judge**

Appellant Sean E. Beagles was convicted of possession of drug paraphernalia with intent to manufacture methamphetamine on November 17, 2003, and was sentenced to four years in prison followed by a six-year suspended imposition of sentence. On September 14, 2006, Mr. Beagles was convicted of felony fleeing and was sentenced to 1½ years in prison followed by a 4½-year suspended imposition of sentence. On January 6, 2009, Mr. Beagles was convicted of felon in possession of a firearm, and was sentenced to three years in prison followed by a three-year suspended imposition of sentence. Mr. Beagles was most recently released from prison on July 21, 2009. The conditions of his suspended sentences provided that he shall not violate any federal, state, or municipal law.

On December 28, 2009, the State filed an amended petition to revoke each of appellant's suspended sentences. In the petition, the State alleged that Mr. Beagles violated his conditions by committing second-degree criminal mischief on November 27, 2009. The State further alleged that on December 23, 2009, Mr. Beagles committed second-degree battery, third-degree battery, sexual assault, and terroristic threatening. After a hearing, the trial court found that Mr. Beagles violated his conditions and revoked each of the suspended sentences. Mr. Beagles was sentenced to a total of 10½ years in prison, and now appeals from his revocations. We affirm.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Rules of the Arkansas Supreme Court, appellant's counsel has filed a motion to withdraw on the grounds that the appeal is without merit. Mr. Beagles's counsel's motion was accompanied by a brief discussing all matters in the record that might arguably support an appeal, and a statement as to why each point raised cannot arguably support an appeal. Mr. Beagles was provided with a copy of his counsel's brief and notified of his right to file a list of pro se points within thirty days, but has declined to file any points.

Fernando DelPozo testified for the State at the revocation hearing. Mr. DelPozo stated that Mr. Beagles was drinking beer at his house on the evening of December 23, 2009. Also present were Darren Caballero, Michael Thompson, and Mr. Thompson's girlfriend. According to Mr. DelPozo, Mr. Thompson's girlfriend complained that Mr. Beagles was attempting to touch her inappropriately. After that, Mr. Beagles stood up and punched

Mr. Thompson in the face. Mr. DelPozo then pushed Mr. Beagles out the door and Mr. Beagles left.

Shortly thereafter, Mr. Caballero was standing on the porch and Mr. Beagles attacked him with a baseball bat, striking him in the head. Mr. Caballero went into the house and then fell to the floor. The police were called, and Mr. Caballero was taken to the hospital by ambulance. Mr. DelPozo went to the hospital to check on Mr. Caballero's condition, and when he returned to his house he found that a window had been broken out and a glass table and his television had been destroyed. Officer Donnie Ware investigated the incident that night, and he observed a knot on Mr. Caballero's head that was still growing. Mr. Thompson testified and corroborated Mr. DelPozo's account that appellant punched Mr. Thompson in the face and struck Mr. Caballero with a baseball bat.

Mr. Caballero testified that after being struck with the bat, he lost consciousness on the way to the hospital. As a result of the injury, he continues to have seizures for which he takes medication. Mr. Caballero testified that he was diagnosed with a double concussion and was in the hospital four times.

Cassandra Cunningham testified about the events that occurred on November 27, 2009. Ms. Cunningham had previously been in a relationship with Mr. Beagles. She stated that she was at her mother's house that day when Mr. Beagles repeatedly banged on the door demanding "his stuff." Ms. Cunningham's mother refused to open the door and told

Mr. Beagles to go away. Then, Ms. Cunningham heard what she described as a loud “boom, boom, boom” outside the house, and she called the police.

Officer Brian Stanley arrived at the scene and confronted Mr. Beagles. A neighbor, Earl Rose, came out and advised Officer Stanley that appellant had been jumping up and down on the top of Ms. Cunningham’s convertible car. Upon inspection, Officer Stanley observed that the entire roof of the convertible had been caved in. Mr. Rose testified that he saw Mr. Beagles jumping up and down on the car and causing damage.

In his no-merit brief, appellant’s counsel correctly asserts that there were no adverse rulings below other than the revocations of his suspended sentences. Appellant’s counsel further asserts that there can be no meritorious challenge to the sufficiency of the evidence to revoke. We agree.

A suspended sentence may be revoked upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of the suspension. *McKenzie v. State*, 60 Ark. App. 162, 961 S.W.2d 775 (1998). Therefore, evidence that is insufficient to convict a person of the offense may be sufficient to revoke. *Id.* On appeal of a revocation, the revocation will not be overturned unless the decision is clearly against the preponderance of the evidence. *Id.* We must give due regard to the trial court’s superior position in determining the credibility of witnesses and weight to be given their testimony. *Id.* In order to revoke, the State need only prove one violation. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005).

In this case the State presented proof of at least two violations of appellant's suspended sentences. In particular, the State established that Mr. Beagles committed second-degree battery and second-degree criminal mischief.

A person commits second-degree battery if, with the purpose of causing physical injury to another person, the person causes serious physical injury to any person. Ark. Code Ann. § 5-13-202(a)(1) (Supp. 2009). "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of a bodily member or organ. Ark. Code Ann. § 5-1-102(21) (Supp. 2009). At the revocation hearing multiple witnesses testified that Mr. Beagles struck Mr. Caballero in the head with a baseball bat, which resulted in unconsciousness and a double concussion. Mr. Caballero has been hospitalized on four occasions as the result of the injury, and he continues to experience seizures. In light of this proof, the trial court's finding that appellant committed second-degree battery was not clearly against the preponderance of the evidence.

Pursuant to Ark. Code Ann. § 5-38-204(a)(1) (Repl. 2006), a person commits second-degree criminal mischief if he recklessly destroys or damages any property of another person. In this case, there was testimony that Mr. Beagles jumped up and down on the roof of his ex-girlfriend's convertible, causing the roof to cave in. It was for the trial court to judge the credibility of this testimony, and there can be no meritorious challenge to the sufficiency

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of the evidence supporting its finding that appellant committed second-degree criminal mischief.

Based on our review of the record and the brief presented, we conclude that there has been compliance with Rule 4-3(k)(1) and that the appeal is without merit. Appellant's counsel's motion to withdraw is granted and the judgment is affirmed.

Affirmed.

GRUBER and BROWN, JJ., agree.