

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR10-543

MICHAEL J. SCOTT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 26, 2011

APPEAL FROM THE CRITTENDEN  
COUNTY CIRCUIT COURT  
[NOS. CR-2001-690, CR-2001-711]

HONORABLE RANDY  
PHILHOURS, JUDGE

AFFIRMED

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**DAVID M. GLOVER, Judge**

In this appeal from the revocation of his suspended sentences, appellant, Michael Scott, contends that there was insufficient evidence to revoke based on new charges of burglary and theft. We affirm.

On August 28, 2001, Scott pleaded guilty to residential burglary and theft of property. He was given twenty-year suspended sentences for each offense, and he was ordered to pay \$475 in court costs at the rate of \$75 per month beginning thirty days after being released from the Arkansas Department of Correction.<sup>1</sup> Conditions of Scott's suspended sentences

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<sup>1</sup> Scott was also sentenced to terms of imprisonment for the offenses of commercial burglary and theft at the same time he was given suspended sentences for theft and residential burglary.

included paying all fines and court costs as provided in the judgment and commitment order; living a law-abiding life and not violating any state, federal, or municipal laws; and promptly notifying his probation officer and the sheriff of any changes in address or employment.

On November 19, 2009, the State filed a petition to revoke Scott's suspended sentences, alleging that Scott had failed to pay costs and fees as directed; failed to notify the sheriff of his current address and employment; and committed the offenses of burglary, theft of property, and fleeing. After a hearing on February 18, 2010, the trial court revoked Scott's suspended sentences and sentenced him to ten years in the Arkansas Department of Correction for each offense, to be served consecutively.

A trial court may revoke a defendant's suspended sentence at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his suspended sentence. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). 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 preponderance of the evidence. *Stultz, supra*. The appellate courts defer to the trial court's superior position to determine credibility and the weight to be accorded testimony. *Id.* In order to revoke a suspended sentence, the State need only prove one violation. *Id.* When appealing the revocation of a suspended sentence, it is the appellant's burden to prove that the

trial court's findings were clearly against the preponderance of the evidence. *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001).

At the close of the revocation hearing, the trial court found that Scott had violated the terms of his suspended sentences by failing to pay his fines and costs as directed without good cause, as well as committing the crimes of theft and burglary. On appeal, Scott challenges the sufficiency of the evidence to support the revocation of his suspended sentences based only upon the charges of burglary and theft, leaving unchallenged the trial court's finding that he had inexcusably failed to pay his fines and costs as directed. Because the State is required to establish only one violation of the terms of the suspended sentences, and Scott failed to challenge the trial court's finding that he inexcusably failed to pay his costs and fines, we affirm on that basis. It is therefore unnecessary to address whether there was sufficient evidence to support the revocation of Scott's suspended sentences based upon whether he committed the offenses of burglary and theft of property.

Affirmed.

ROBBINS and WYNNE, JJ., agree.