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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR10-937

JAMES EDDIE FLINN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** February 16, 2011 APPEAL FROM THE CLARK COUNTY CIRCUIT COURT [No. CR-2006-72] HONORABLE ROBERT E. McCALLUM, JUDGE AFFIRMED

LARRY D. VAUGHT, Chief Judge

James Eddie Flinn appeals the Clark County Circuit Court's order revoking his probation and sentencing him to a term of ten years' imprisonment. On appeal, he argues that he lacked the mental capacity to inexcusably violate his conditions of probation. Because this argument is not preserved for appeal, we affirm.

On September 4, 2007, Flinn was placed on five years' probation after being convicted of residential burglary. He was also ordered to pay fines and costs and to attend an outpatient drug program. The State filed a motion to revoke Flinn's probation on May 11, 2010, alleging that Flinn violated the terms of his probation by failing to report to his supervising officer; failing to provide his supervising officer with proof of employment; failing to pay supervision fees; failing to pay Clark County Sheriff's office fees; and failing to complete a substance-abuse program.

A revocation hearing was held on July 8, 2010, and the State introduced the testimony of Rhonda Ware, Flinn's probation officer. She testified that she discussed the standard rules of probation with Flinn and that Flinn did not have any questions about them. She testified that Flinn appeared to understand the conditions of probation and that he signed them. Ware then stated that Flinn had failed to report for more than a one-year period without explanation. She said that Flinn also failed to provide her proof of employment; he failed to make any payments on his fees and costs, never asking for extensions to pay; and he failed to complete a substance-abuse program.

Flinn testified that he had been living in the back of an appliance store where he also worked. He said that he was paid in cash. He testified that he did not have a car and that he could not get a driver's license because he had epilepsy and seizures. When asked whether he made payments as required, he stated that "I was going to send what I can . . . I'm on a fixed income every month. I get $674." He denied knowing that he was required to complete a substance-abuse program.

At the conclusion of the hearing, the trial court found that Flinn violated the terms of his probation and imposed the above-stated sentence. When discussing the Department of Correction programs that might benefit Flinn, the trial court stated, "[a]nd if there [are] any mental health programs that he would qualify for, I'm sure and would hope that the Department would make sure he gets that treatment." The judgment and commitment order revoking Flinn's probation was entered on August 4, 2010. Flinn timely appealed from that order.

In a hearing to revoke a probation or suspended imposition of sentence, the State must

prove its case by a preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 257, 240 S.W.3d 615, 617 (2006). 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(d) (Supp. 2009); *Haley*, 96 Ark. App. at 258, 240 S.W.3d at 617. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Id.*, 240 S.W.3d at 617. 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.*, 240 S.W.3d at 617. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.*, 240 S.W.3d at 617. 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. *Id.*, 240 S.W.3d at 617.

Flinn's challenge to the trial court's revocation is based upon his argument that he was mentally incompetent. He argues:

> In this case, there was evidence that the trial court doubted that the appellant was mentally stable, in that he directed the prosecutor to make sure the Department of Correction specifically screened for any mental illness treatment for which Flinn might qualify. This doubt goes to the revocation requirement that the defendant inexcusably failed to comply with his conditions of probation, A.C.A. 5-4-306(d) and *Rudd* [*v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001)], and thus reversal is called for.

We cannot reach the merits of this argument because it is not preserved. Flinn did not make this argument below. There was no mention of Flinn's mental capacity, or lack thereof, prior to or during the hearing. No request for a mental evaluation was made. No objections at the hearing were made on that basis. There is no evidence in the record that Flinn lacked the

mental capacity to comply with his probation conditions. Flinn testified and never discussed any mental health problems that he had, and he did not state at any time that he was unable to comply with his probation conditions because of his lack of mental health. The trial court's revocation decision did not include any findings concerning Flinn's mental health. There was no mention of Flinn's mental health until after the trial court made its revocation decision; the only comment made was offered at the close of the hearing.

It is well settled that an appellant must raise an argument below and obtain a ruling to preserve the issue for appellate review. *Flowers v. State*, 92 Ark. App. 337, 341, 213 S.W.3d 648, 651 (2005) (citing *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998)). The same is true for revocation proceedings. *Swanigan v. State*, 336 Ark. 285, 288, 984 S.W.2d 799, 801 (1999) (affirming the trial court's revocation decision because the appellant failed to preserve the argument for appeal). Because Flinn failed to raise below the argument he now presents on appeal, we hold that it is not preserved.

Affirmed.

GLADWIN and MARTIN, JJ., agree.