

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CACR10-917

MARY ANN HILLMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 16, 2011

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. CR-05-1506]

HONORABLE DAVID L.  
REYNOLDS, JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

Appellant Mary Ann Hillman appeals the revocation of her probation in case No. CR-05-1506. Hillman was sentenced to two years in the Regional Correctional Facility (RCF). She argues that the trial court erred in finding that she violated the terms and conditions of her probation. We affirm.

On or about April 26, 2006, Hillman pled guilty to drug fraud (Class D felony) and criminal mischief (Class A misdemeanor). She was placed on probation for five years and one year, respectively. The State filed a motion for a revocation warrant on January 26, 2009. A “Worksheet for Revocation” filed with the court alleged that Hillman had committed the offenses of felony possession of prescription medication without a prescription and felony possession of a controlled substance in Conway County on or about December 20, 2008.

Hillman's revocation hearing took place on June 8, 2009. Eric Lee of the Arkansas State Police testified that he came in contact with Hillman in December 2008 in Conway County. According to Trooper Lee, he initiated a traffic stop on Hillman's vehicle, and noticed that she appeared nervous when he obtained her driver's license. The license check revealed that Hillman had an active warrant in Perry County. Trooper Lee allowed Hillman to drive to the next exit and wait for someone to come pick up her children before he arrested her on the warrant. When Hillman exited her vehicle, she threw her purse in the back of the car, and Trooper Lee asked her "if she had anything illegal in there." Hillman replied no, and at some point, retrieved the purse to show Trooper Lee that the purse contained nothing illegal. However, Trooper Lee noticed that Hillman was trying to "hide a plastic baggie that was inside the purse." He stated that he could see the baggie through Hillman's hand. At that point, he took the purse and the baggie from Hillman. Trooper Lee testified that the baggie contained several pills including twenty hydrocodone pills. Five Xanax pills were also found in a container. Trooper Lee stated that when he got Hillman to the detention center, he emptied her purse and "found more pills." A brown paper sack contained seven-and-a-half Xanax, twelve hydrocodone, and thirty-one Ibuprofen. Ritalin was also found in the contents of Hillman's purse. In all, Trooper Lee testified that he found twelve-and-a-half Xanax, thirty-two hydrocodone, and two Ritalin in Hillman's possession. At the time of her arrest, none of the pills were in prescription bottles.

Brenna Willis, Hillman's probation officer, stated that Hillman had been on a number of medications throughout her probation period. She testified that Hillman had a problem

with prescription drugs, and that Hillman “goes to multiple doctors to get medication.” Willis opined that Hillman could benefit from the programs offered at RCF.

On cross-examination, Willis stated that although Hillman does have a number of prescriptions, the pills found in Hillman’s possession in December 2008 were not in prescription bottles. She testified, “I don’t know if she had a prescription at the time that she was arrested; she does now. I first knew that she was taking prescription drugs when she brought them into me on 10/6/09.”

On re-direct, Willis said that Hillman did not bring in proof of hydrocodone until October 2009. She acknowledged that Hillman possessed the pills in December 2008, eleven months before she produced a prescription. She also stated that “there is an eleven-month period where we don’t know how she was getting the pills.” Willis testified that Xanax was not a pill that Hillman said she had a prescription for.

Hillman testified that she had prescriptions for hydrocodone starting in July 2007. She also stated that she had been on and off of Xanax for five years. Hillman told the court that she was being charged for drugs for which she had prescriptions.

Hillman admitted four pages of prescriptions into evidence. Those exhibits showed that Hillman was prescribed a thirty-day supply of hydrocodone on March 4, 2008; she was also prescribed a thirty-day supply of Xanax the same day. There were no prescriptions for Ritalin introduced into evidence.

Hillman’s probation was revoked at the conclusion of the hearing. The trial court found that Hillman had violated the terms and conditions of her probation. The court

expressed its belief that Hillman had a drug problem and sentenced her to two years in RCF. This appeal followed.

A sentence of probation may be revoked when a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation.<sup>1</sup> The State need only show that the appellant committed one violation to sustain a revocation.<sup>2</sup> We give great deference to the trial court in determining the preponderance of the evidence because the trial judge is in a superior position to determine the credibility of witnesses and to determine the weight to be given to their testimony.<sup>3</sup> Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence.<sup>4</sup> We will not reverse the revocation unless the decision is clearly against the preponderance of the evidence.<sup>5</sup>

Hillman argues on appeal that the trial court erred by revoking her probation. She contends that since she had prescriptions for hydrocodone and Xanax dated both before and after the December 2008 traffic stop, she was not in violation. However, this argument lacks merit. While it is true that Hillman was written prescriptions for hydrocodone and Xanax in

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<sup>1</sup>Ark. Code Ann. § 5-4-309(d) (Supp. 2009); *Williams v. State*, 351 Ark. 229, 91 S.W.3d 68 (2002).

<sup>2</sup>*Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

<sup>3</sup>*Id.*

<sup>4</sup>*Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001).

<sup>5</sup>*Williams, supra.*

March 2008, the prescriptions were only for thirty days. At the time the drugs were found in Hillman's possession, nine months had passed since she received the prescriptions. Additionally, even if we accept Hillman's argument that she had prescriptions for the hydrocodone and Xanax, we would still affirm the revocation. Hillman's argument fails to mention the fact that she was also in possession of Ritalin, a Schedule II Controlled Substance, for which she had no prescription. Since a preponderance of the evidence supports the trial court's revocation of Hillman's probation, we affirm.

Affirmed.

WYNNE, J., agrees.

HART, J., concurs.