

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-679

JAMES D. HORTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: February 14, 2018

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43CR-16-486]

HONORABLE BARBARA ELMORE,
JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

On January 9, 2017, appellant James D. Horton pleaded guilty to second-degree domestic battering and aggravated assault on a family member. For these offenses Mr. Horton was placed on six years' probation. Among other things, his conditions of probation prohibited him from committing any offense punishable by imprisonment, required him to get prior approval from his probation officer before changing residences, required him to be truthful to his probation officer, required him to have no contact with his parents James and Mary Horton, and prohibited him from using controlled substances.

On February 23, 2017, the State filed a petition to revoke Mr. Horton's probation, alleging the following violations: (1) committing the offense of indecent exposure, (2) changing residences without prior approval, (3) being untruthful to his probation officer, and (4) violating the no-contact order. On March 15, 2017, the State filed an amended

petition to revoke, adding an additional allegation that Mr. Horton had tested positive for cocaine.

After a revocation hearing, the trial court announced from the bench that Mr. Horton had violated his probation by committing indecent exposure, lying to his probation officer, violating the no-contact order, and testing positive for cocaine. Based on these findings the trial court revoked Mr. Horton's probation. On May 17, 2017, the trial court entered a sentencing order sentencing Mr. Horton to six years in prison.

Mr. Horton now appeals from the revocation of his probation, raising one argument for reversal. Mr. Horton argues that the trial court abused its discretion in admitting testimony in violation of his Sixth Amendment right to confront witnesses. We affirm.

Appellant's probation officer, Kristin Trigg, testified at the revocation hearing. Ms. Trigg stated that, on January 18, 2017, Mr. Horton reported that his residence was 202 West St. John Street, England, Arkansas, which was where his parents lived. Ms. Trigg also testified, over appellant's confrontation-clause objection, that Mr. Horton's mother had driven him to a probation visit on January 17, 2017. Appellant objected to this testimony because Ms. Trigg did not personally observe Mr. Horton being in contact with his mother that day, but was only reading from the notes of a previous probation officer to which Mr. Horton had reported. Ms. Trigg testified that her first meeting with Mr. Horton was on February 13, 2017, and that on that day Mr. Horton tested positive for cocaine. Ms. Trigg also gave testimony that Mr. Horton had reported that his employer was a man named Harold Rowe, and when Ms. Trigg called Mr. Rowe to confirm appellant's employment, Mr. Rowe advised that Mr. Horton had not worked for him in several years.

The State also elicited testimony from Alyssa Miller, who worked at the probation office doing paperwork for the intake process. Ms. Miller testified that, during one of his probation visits, Mr. Horton exposed his penis.

Mr. Horton testified on his own behalf, and he acknowledged that he lived with his parents. Mr. Horton did not deny exposing himself at the probation office, but he indicated that his pants had accidentally come unzipped.

In this appeal, Mr. Horton argues that the trial court erred in permitting his probation officer, Ms. Trigg, to testify about him violating the no-contact order by riding to the January 17, 2017 probation meeting with his mother. Mr. Horton contends that this was a constitutional violation of his right to confront witnesses because Ms. Trigg did not actually observe this alleged contact with his mother but was only reading notes from what another probation officer had observed. Mr. Horton concedes that the rules of evidence do not apply in revocation proceedings. *See* Ark. R. Evid. 1101(b)(3). However, he relies on *Goforth v. State*, 27 Ark. App. 150, 767 SW.2d 537 (1989), where we held that although in a revocation hearing a defendant is not entitled to the full panoply of rights that attend a criminal prosecution, he is entitled to due process. We held that, even in a probation-revocation proceeding, a defendant has the due-process right to confront witnesses. *Goforth, supra*.

In probation-revocation proceedings, the State has the burden of proving that a probationer violated the terms of his probation, as alleged in the revocation petition, by a preponderance of the evidence, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Henderson*

v. State, 2017 Ark. App. 486. The State need only show that appellant committed one violation in order to sustain a revocation. *Id.* When a trial court bases its decision on alternate independent grounds and the appellant challenges only one of those grounds, we will affirm without addressing the merits of either. *Bedford v. State*, 2014 Ark. App. 239.

Here, the trial court expressly based its decision to revoke on four independent grounds: that appellant committed indecent exposure, was untruthful to his probation officer, violated a no-contact order, and tested positive for cocaine. On appeal, Mr. Horton argues only that his right to confront witnesses was violated, which pertains only to the probation violation of violating the no-contact order by being in a car with his mother. Because Mr. Horton has failed to make any challenge to the remaining three alternative grounds for revocation, we must affirm. See *Bedford, supra*; *Bovee v. State*, 2011 Ark. App. 158; *Murry v. State*, 2010 Ark. App. 782.

Affirmed.

ABRAMSON and VAUGHT, JJ., agree.

The Lane Firm, by: *Jonathan T. Lane*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Amanda Jegley*, Ass’t Att’y Gen., for appellee.