

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-56

NICHOLAS GIBBS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 7, 2009

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[No. CR-2007-918]

HONORABLE JOHN N. FOGLEMAN,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Nicholas Gibbs was sentenced to six-years' probation after pleading guilty to possession of a controlled substance. Less than a year later, the prosecutor filed a petition to revoke his probation alleging several violations of the conditions of probation. The trial court found that Gibbs violated two conditions—associating with persons he knew or had reason to believe were committing crimes and failing to attend each of his monthly meetings with his probation officer. On appeal, Gibbs argues that the preponderance of the evidence does not support the trial court's findings. We see no error and affirm.

In a hearing on a petition to revoke, the burden is upon the State to prove the violation of a condition of the probation by a preponderance of the evidence; however, on appeal we do not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). Neither the same quality nor

degree of proof is required for the exercise of the court's discretion to revoke the suspension of a sentence as is required for the finding of guilt beyond a reasonable doubt; because the defendant in a probation-revocation proceeding is not being tried on a criminal charge, only a preponderance of the evidence is necessary to support a finding that the probationer has inexcusably breached a condition associated with his release. *Ellerson v. State*, 261 Ark. 525, 549 S.W.2d 495 (1977).

One of the conditions of Gibbs's probation was that he not associate with felons. However, the testimony established that Gibbs had been present when search warrants were executed at two different Jonesboro locations and that at both locations a man named Jan Doyle was present. Doyle was known to the police to be a convicted felon; he was also Gibbs's first cousin. Although Gibbs testified that his two documented encounters involving Doyle were purely coincidental and unavoidable, the trial court found Gibbs's explanation of the encounters to be inconsistent and lacking in veracity. Certainly, credibility is left within the sound discretion of the trial court, and it could reject all or some of Gibbs's self-serving testimony as he was the person most interested in the outcome of the hearing. *Winbush v. State*, 82 Ark. App. 365, 107 S.W.3d 882 (2003).

Based on the foregoing, we are satisfied that a preponderance of the evidence supports the trial court's finding that Gibbs violated the terms and conditions of his probation by associating—at least twice—with a known felon. Finally, because proof of a single violation of the terms and conditions of release is sufficient to support revocation, we need not address Gibbs's second point on appeal relating to his alleged failure to regularly meet with his probation officer.

Cite as 2009 Ark. App. 645

Affirmed.

HART and GRUBER, JJ., agree.