

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION III

CACR08-1253

May 27, 2009

BROOKE ANN LIMON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[CR-2006-398]

HONORABLE GARY COTTRELL,
JUDGE

AFFIRMED

The Crawford County Circuit Court revoked appellant Brooke Limon's probation and sentenced her to ten years' imprisonment. On appeal, Limon argues that the trial court erred in finding that she violated her probation. We affirm.

On September 12, 2007, Limon pleaded nolo contendere to possession of methadone, driving while intoxicated, and second-degree criminal mischief. She was placed on five years' probation and ordered to make restitution of \$37,635 in \$100 monthly installments beginning on October 15, 2007. Conditions of her probation also included not committing an offense punishable by imprisonment; not using or possessing controlled substances except as prescribed by a physician; reporting to her probation

officer; and participating in Narcotics Anonymous meetings as deemed necessary by the probation officer.

On March 21, 2008, the State filed a petition to revoke Limon's probation, alleging that she had been arrested on December 18, 2007, by the Fort Smith Police Department for filing a false police report and for theft of property, in violation of the terms of her probation. After a hearing, the trial court found that Limon had violated the terms of her probation by failing to report to her probation officer, by filing a false police report, and, by her own testimony, being involved with drugs.¹ The trial court revoked Limon's probation and sentenced her to ten years' imprisonment.

A trial court may revoke a defendant's probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In probation revocation proceedings, the State has the burden of proving that appellant 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. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only

¹ Although the State's petition to revoke only cited Limon's subsequent arrest for filing a false police report and for theft of property, the trial court revoked her probation not only for filing a false police report but also because she had failed to report to her probation officer and had been involved with drugs, allegations not set forth by the State in the petition to revoke. However, Limon makes no argument that revocation on these bases was improper.

show that the appellant committed one violation in order to sustain a revocation. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

On appeal, Limon argues that the trial court erred in finding that she had inexcusably failed to pay her supervision fees. Though Limon was required to make \$100 monthly payments on \$37,635 in restitution, the evidence at the revocation hearing from her probation officer was that she had only made two payments of twenty-five dollars each. This argument is unpersuasive because a review of the trial court's ruling indicates that the failure to make restitution payments was not a basis on which the trial court revoked her probation.

Limon also argues that she did not violate the conditions of her probation simply because she had charges pending against her, as she is presumed innocent until proven guilty. Her argument is ineffective. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). One of the conditions of Limon's probation was that she not commit an offense punishable by imprisonment. In her testimony Limon admitted that she lied to officers about being kidnapped on December 15, 2007; that she told them the truth about what had happened on December 17, which was that she had voluntarily gone with the person to obtain illegal drugs; and that, as a result, she was arrested for filing a false police report. Filing a false report with a law enforcement agency is an offense punishable by imprisonment. *See Ark. Code Ann. § 5-54-122(c)* (Supp. 2007). By her own admission, Limon clearly violated the conditions of her probation. *See Morgan v. State*, 72 Ark. App.

482, 37 S.W.3d 684 (2001). The State only has to prove one violation to sustain a revocation; the trial court did not err in revoking Limon's probation.

Affirmed.

GLADWIN and GRUBER, JJ., agree.