

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR08-1307ELLIOT EUGENE FLOWERS,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE**Opinion Delivered** MAY 13, 2009APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR2006-3222, CR2007-94,
CR2007-757]

HONORABLE BARRY SIMS, JUDGE

AFFIRMED

KAREN R. BAKER, Judge

On April 23, 2007, appellant Flowers pled no contest to one count of theft by receiving, a class B felony, and one count of obstructing governmental operations, a Class C misdemeanor. Appellant received 120 days' imprisonment in the county jail, five years' probation, and a \$500 fine. On that same day, appellant pled guilty in a separate case to one count of robbery, a Class B felony; one count of third-degree battery, a Class A misdemeanor; and one count of theft of property, a Class A misdemeanor. In this second case, appellant received 120 days' incarceration in the county jail, five years' probation for the robbery, one year probation for the two misdemeanors, and a \$500 fine. Additionally, appellant pled guilty in yet a third case to theft by receiving, a Class B felony. In this third case, appellant was sentenced to 120 days' incarceration in the county jail, five years' probation, and a \$500 fine. Approximately one year later, on April 16, 2008, the State filed a petition to revoke appellant's probation in each of the above cases. Following a revocation hearing, the trial court granted the State's petition and sentenced appellant to twenty years' imprisonment in

the Arkansas Department of Correction in each case, to be served concurrently. On appeal, appellant asserts that the trial court erred in granting the State's petition to revoke in each of the three cases, because the State failed to introduce proof at the joint probation revocation hearing that appellant had inexcusably failed to comply with the conditions of his probation. We affirm.

A suspended sentence may be revoked if the trial court finds by a preponderance of the evidence that the defendant inexcusably violated a term of that suspension. Ark. Code Ann. § 5-4-309 (Repl. 2006); *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson, supra*. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* When appealing a revocation, the appellant has the burden of showing that the trial court's findings are against the preponderance of the evidence. *Shaw v. State*, 65 Ark. App. 186, 986 S.W.2d 129 (1999). Since determination of a preponderance of the evidence turns on questions of credibility and weight given the testimony, we defer to the trial judge's superior position. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002).

Appellant contends that the State failed to introduce proof that appellant *inexcusably* failed to report to his probation officer, failed to pay probation supervision fees, and failed to pay restitution to the victims of his crimes. Appellant specifically alleges that the State "did not negate the possibility that Appellant Flowers had a legitimate reason, poverty, for his failure to pay probation supervision fees and to pay restitution to the victims." In revocation proceedings, the burden is on the State to prove by a preponderance of the evidence that the defendant has inexcusably violated a condition of his suspension. *Cavin v. State*, 11 Ark. App. 294, 669 S.W.2d 508 (1984). While the burden of proof does not shift, once the State has introduced evidence of a

violation, the burden of going forward shifts to the defendant to offer some reasonable excuse for his failure to comply. *See Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). Here, appellant's probation officer, Samantha Allison, testified that appellant failed to attend their scheduled appointment on September 26, 2007, and failed to pay his supervision fees and restitution. Moreover, Ms. Allison testified that appellant failed to report to her his arrest for theft by receiving and obstructing governmental operations.

Appellant testified on his own behalf and stated that he failed to report to his probation officer on September 26, 2007. He offered no excuse as to why he failed to report. Further, appellant admitted during his testimony that he had failed to pay his restitution and that he had failed to pay his probation fees in the last six months. Appellant also admitted that he failed to report his arrest, and confirmed that he "knew [he] was supposed to." While appellant testified that he had a job at UAMS, he admitted that he put his earnings toward the living expenses incurred by him and his live-in girlfriend, rather than applying any portion of his income toward his fines and restitution. Appellant offered no reasonable excuse for failing to make payments toward his fees and restitution, failing to report to his probation officer, and failing to report his arrest. Accordingly, we hold the trial court did not err in revoking appellant's probation.

Affirmed.

VAUGHT, C.J., and MARSHALL, J., agree.