ARKANSAS COURT OF APPEALS

DIVISION II No. CACR 08-1314

Opinion Delivered May 6, 2009

TIMOTHY DUANE GIFFIN

APPELLANT

APPEAL FROM THE MILLER COUNTY CIRCUIT COURT [NO. CR-1994-0300-1]

V.

HONORABLE KIRK JOHNSON, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Timothy Giffin argues that the trial court erred in finding that he violated the terms and conditions of his probation by failing to pay his fines. We find no error and affirm.

On August 14, 1995, Giffin pled guilty to felony possession of marijuana with intent to deliver and felony possession of drug paraphernalia. The court sentenced him to five years' probation and ordered that he pay a \$3500 fine, fees, and court costs. On July 28, 2000, the State filed a revocation petition alleging that Giffin failed to pay the balance owed on the fine,

¹Giffin's warrant-service argument is not preserved for our review as it was not presented below. Giffin merely requested that the trial court take judicial notice of the time of the warrant's issuance and service. Claims must be presented to the circuit court in order to preserve them for appeal. *Stephens v. State*, 342 Ark. 151, 28 S.W.3d 260 (2000). Although Giffin did mention the point in closing, he offered no argument relating to the issue, and the point is not preserved for appeal. *Deweese v. State*, 26 Ark. App. 126, 761 S.W.2d 945 (1988).

fees, and costs. After conducting a hearing, the court found that Giffin had violated the terms and conditions of his probation, revoked the probation, and sentenced him to ten years' imprisonment. On appeal, Giffin claims that the trial court erred in its decision to revoke because his failure to pay was not willful and was excusable.

A circuit court may revoke a defendant's probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of the probation. See Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In revocation proceedings, the State has the burden of proving a violation of a condition of the probation by a preponderance of the evidence, and we will not reverse a circuit court's decision to revoke unless it is clearly against the preponderance of the evidence. Bradley v. State, 347 Ark. 518, 65 S.W.3d 874 (2002). Once the State introduces evidence showing a violation of a condition related to costs, the defendant then bears the burden of going forward with some reasonable excuse for his failure to pay. Palmer v. State, 60 Ark. App. 97, 959 S.W.2d 420 (1998).

Here, Jo Frederickson, a probation-parole officer, testified that Giffin signed the terms and conditions of his probation, which included a condition that he pay a \$3500 fine and \$484.95 in court costs at a rate of \$70 per month. At the time the revocation petition was filed, Giffin was \$1540 in arrears. No payments were tendered after the revocation petition was filed and the probation office received no explanation as to why the payments had stopped.

At the hearing Giffin testified that his failure to pay was directly related to his move from Arkansas to Minnesota. He stated that upon his transfer to Minnesota, he initially made his payments. But, after his girlfriend burned all of his personal effects, his payments lapsed.

He further testified that he had attempted to send a \$100 payment and a \$600 payment toward his debt, but that he could not get the correct information from the Miller County probation office. However, Faye Walden testified that after Giffin's initial intake she sent an interstate packet of information about Giffin and the conditions of his probation to Minnesota. Walden further testified that Giffin was given instructions as to his reporting requirements for the Minnesota probation office.

The trial court discounted Giffin's testimony, deeming it incredible. The court further found that once the State presented evidence of nonpayment, Giffin tendered no reasonable excuse. As such, the trial court found that the State's proof was sufficient. *Palmer, supra*. We review the evidence in the light most favorable to the State, *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003), and defer to the circuit court's superior position on questions of credibility and weight to be given the testimony. *Mashburn v. State*, 87 Ark. App. 89, 189 S.W.3d 73 (2004). Here, the question on appeal hinges on the trial court's credibility determination, which the trial court affirmatively resolved against Giffin. As such, we defer to the trial court's superior position to judge such matters and affirm the trial court's revocation.

Affirmed.

MARSHALL and BAKER, JJ., agree.