

Cite as 2009 Ark. App. 691

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR09-193

LORETTA BOBBIE HODGSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered 21 OCTOBER 2009

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CR-2005-265]

THE HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

In March 2005, Loretta Hodgson entered a negotiated plea of guilty to felony overdraft charges. The circuit court suspended imposition of sentence for sixty months and, as part of the terms and conditions of the suspension, ordered Hodgson to pay nearly \$3,000.00 in restitution, a \$1,000.00 fine, and \$150.00 in court costs. Hodgson was supposed to make her payments each month to the prosecuting attorney's office until she had satisfied all these financial obligations.

About two years later, the State petitioned to revoke Hodgson's SIS, alleging that she had failed to make payments. In July 2007, Hodgson and the prosecuting attorney entered into a court-approved agreement, which extended her time to pay. Hodgson agreed that she knew when her next payment was due, knew the amount



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owed, was employed, and would be able to make the payment.

The State filed another petition to revoke in August 2008, alleging that Hodgson had committed the offense of possessing marijuana (second offense) and had still not paid her court-ordered restitution, fines, and costs. After a hearing, the circuit court revoked Hodgson's SIS because of her failure to pay and sentenced her to twelve months' imprisonment and nine years' SIS. Hodgson appeals.

The State had to prove that Hodgson inexcusably failed to pay her court-ordered financial obligations. *Beebe v. State*, 2009 Ark. App. 113, at 1–2, 303 S.W.3d 89, 90–91. But once the State proved nonpayment, Hodgson had to offer some reasonable excuse for failing to pay. *Ibid.* We uphold a circuit court's findings about revocation unless they are clearly against the preponderance of the evidence. *Beebe*, 2009 Ark. App. 113, at 2, 303 S.W.3d at 90.

At the hearing, the State introduced a payment ledger showing that Hodgson had made only two \$60.00 payments, the last in November 2005. Hodgson said that she had tried to make payments, but that the prosecutor's office would not accept her payments because "there was nothing registered." She also said that her attorney checked into the matter and got no answers. According to Hodgson, the last time she went to the prosecutor's office to try to make a payment was April or May 2008. Though she had been working, Hodgson testified she lost her job due to the recent



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drug charge. Hodgson also said that, although she did not have a lot of money, she wanted to put the restitution matter behind her. And she said that, given another chance, she would make the payments. Throughout her testimony, however, Hodgson never claimed that she was unable to pay. *Cf. Jordan v. State*, 327 Ark. 117, 939 S.W.2d 255 (1997).

The circuit court found Hodgson’s excuse incredible: “I don’t believe her at all about the fact that she or with regard to the payment and the fact that the [p]rosecutor’s [o]ffice didn’t have a file.” We defer to the circuit court’s credibility determination. *Phillips v. State*, 101 Ark. App. 190, 192, 272 S.W.3d 123, 125 (2008). Because Hodgson never claimed she was unable to pay and because the circuit court found her only excuse incredible, we affirm the revocation.

Affirmed.

VAUGHT, C.J., and GLADWIN, J., agree.

Charles E. Smith, for appellant.

Dustin McDaniel, Att’y Gen., by: Brad Newman, Ass’t Att’y Gen., for appellee.