Cite as 2010 Ark. App. 38

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-515

	Opinion Delivered January 13, 2010
SANDY YARBROUGH SMITH APPELLANT	APPEAL FROM THE CRITTENDEN COUNTY CIRCUIT COURT [CR-2007-363B]
V.	HONORABLE RALPH WILSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED; MOTION GRANTED

DAVID M. GLOVER, Judge

Appellant, Sandy Smith, pleaded guilty to the underlying offense of theft of property in April 2007. He was placed on supervised probation for a period of sixty months. On July 15, 2008, the State filed a petition to revoke his probation. Following a hearing, the trial court concluded that appellant had violated the terms and conditions of his probation and granted the State's petition.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. Accompanying this motion, counsel has filed a brief which contains an abstract, addendum, and argument section listing all adverse rulings made by the circuit court with an explanation as to why each adverse

ruling is not a meritorious ground for reversal. The clerk of this court sent appellant a copy of counsel's brief and notified him of the right to raise *pro se* points on appeal. Appellant chose not to file any points on appeal.

In a hearing to revoke probation or a suspended imposition of sentence, the State must prove its case by a preponderance of the evidence. *May v. State*, 2009 Ark. App. 703. To revoke probation or a suspension, the circuit court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309 (Supp. 2009); *May, supra*. The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *May, supra*. When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id*. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id*. Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Id*.

First, there was no clear error in the trial court's finding that appellant had violated the terms and conditions of his probation by 1) failing to pay the ordered fines, costs, and restitution; 2) failing to report to his probation officer; and 3) failing to pay his probation fees. Debra Wiseman, an employee of the Crittenden County Sheriff's office, testified that she received an assessment of $2,250 for fines and costs and $23,235.12 for restitution concerning appellant's probation. She stated that she had not received any payments toward those

amounts, and showed "an accurate duplicate of the ledger sheet which reflected all assessments and credits."

The violation of one condition is sufficient to support a revocation. In addition, however, there was also testimony that appellant had not reported to his probation officer since April 20, 2007, which was his intake date; and that as of July 11, 2008, he was delinquent $325 in his supervision fees.

Aside from the revocation itself, there was only one adverse ruling during the revocation hearing. Appellant objected to the introduction of testimony concerning the status of appellant's payments toward the restitution amount of $23,235.12. The objection was based upon the argument that the negotiated plea papers concerning the underlying offense reflected that restitution was "to be determined," with no amount specified. The trial court overruled the objection, explaining that the record contained an order of restitution dated October 23, 2007, signed by both the prosecutor and the defense attorney and establishing the specific restitution amount. Clearly, this ruling cannot serve as a basis for reversal of the revocation.

After a careful review of the record and counsel's brief, we find compliance with Rule 4-3(k) and conclude that the appeal is wholly without merit. Accordingly, we grant counsel's motion to be relieved and affirm the revocation of appellant's probation.

Affirmed; motion granted.

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