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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-803

CLARK A. GRAY APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** FEBRUARY 17, 2010 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [CR-08-218-4] HONORABLE MARCIA R. HEARNSBERGER, JUDGE AFFIRMED

RITA W. GRUBER, Judge

Clark Gray, a registered sex offender, appeals from the revocation of his probation. The circuit court found that Gray had violated the conditions of his probation by committing a criminal offense punishable by imprisonment—specifically, failing to comply with sex offender registration and reporting requirements. The circuit court therefore revoked Gray's probation and sentenced him to five years in the Arkansas Department of Correction. Gray presents two points on appeal. First, he contends that the circuit court erred in taking judicial notice of the conditions of his probation; and second, he claims that there was insufficient evidence to revoke his probation. We find no error and affirm the circuit court's order of revocation.

On September 16, 2008, appellant entered a plea agreement, pleading guilty to failing to comply with the sex offender registration and reporting requirements, a Class C felony.

An order was entered reflecting this conviction on September 30, 2008, sentencing him to ten years' probation. Written conditions of appellant's probation—titled Conditions of Suspended Imposition of Sentence—were signed by the circuit judge and appellant and filed with the circuit clerk on September 16, 2008. One of the conditions was that appellant must not commit a criminal offense punishable by imprisonment.

The testimony at the revocation hearing revealed that on September 17, 2008, after appellant was released from custody, he approached John Henry, who manages the sex offender registry for the Garland County Sheriff's Office, about living in Garland County. Mr. Henry informed appellant that he had thirty days to provide an address for the registry. On October 8, 2008, appellant told Mr. Henry that he was living at Lakeside Residential Care at 136 Stanage Terrace. Mr. Henry told appellant that he could not use that address for registration purposes because it was less than 2,000 feet from a daycare facility and, as a Level 4 sex offender, appellant could not reside within 2,000 feet of a daycare, school, or park, and Lakeside Residential Care's backyard touched the backyard of a daycare.[1] When Mr. Henry spoke with appellant again, on October 22, 2008, appellant said he was still living at Lakeside. Mr. Henry testified that he told appellant he would be arrested and taken to jail if he did not move and provide Mr. Henry with a suitable address. On October 29, 2008, Mr. Henry spoke with appellant and appellant said that he was still living at Lakeside. On November 17, 2008, Mr. Henry saw appellant at Lakeside and swore a warrant for appellant's arrest for not

[1] *See* Ark. Code Ann. § 5-14-128 (Supp. 2009).

registering a valid address.

Appellant testified that he tried to find a suitable place to live before he was released from jail but could not. He said he did have a conversation with Mr. Henry before he was released in which he told Mr. Henry that he was planning to live at Lakeside. He admitted that Mr. Henry had told him several times that he could not live at Lakeside, but he did not move.

The circuit court revoked appellant's probation for failing to comply with the sex offender registration and reporting requirements and sentenced him to five years' imprisonment. This order was entered by the circuit court on April 9, 2009. Appellant brought this appeal.

We turn first to appellant's contention that the circuit court erred in taking judicial notice of the complete case file; specifically, he challenges judicial notice of the conditions of his probation. This case began in the circuit court on May 12, 2008, with the filing of an information charging appellant with the offense of failing to comply with the sex offender registration and reporting requirements. He was convicted of that offense pursuant to a guilty plea, and a judgment and commitment order was entered on September 30, 2008. Appellant was sentenced to ten years' probation. This case was given the circuit court case number of CR-2008-218 IV. The case continued and the judgment and commitment order revoking appellant's probation was entered on April 9, 2009. The case number in the circuit court remained CR-2008-218 IV.

At the beginning of the revocation hearing, over appellant's objection, the State asked the court to take judicial notice of its complete case file and docket sheet in CR-2008-218 IV. The court took judicial notice of its file, overruled appellant's objection, and admitted the file—including the conditions of probation—into evidence. We will not reverse a trial court's ruling in matters relating to the admission of evidence absent an abuse of discretion. *K.N. v. State*, 360 Ark. 579, 584, 203 S.W.3d 103, 104 (2005).

Appellant argues that written conditions of probation are an element of proof and a trial court may not take judicial notice of them. He cites *Carr v. Fair*, 92 Ark. 359, 122 S.W. 659 (1909), for the proposition that a court may not take judicial notice of evidence, and he cites *Southern Farmers Association, Inc. v. Wyatt*, 234 Ark. 649, 333 S.W.2d 531 (1962), for the proposition that a court cannot take judicial notice of its own records. We do not find appellant's authority persuasive.

First, the Arkansas Rules of Evidence do not apply in revocation proceedings. *Miner v. State*, 342 Ark. 283, 28 S.W.3d 280 (2000). The court may permit the introduction of "any relevant evidence of the alleged violation, including a letter, affidavit, and other documentary evidence, regardless of its admissibility under the rules governing the admission of evidence in a criminal trial." Ark. Code Ann. § 5-4-310(c)(2) (Repl. 2006). Indeed, appellant does not appear to be arguing that the written conditions of his probation should not have been introduced into evidence; rather, he challenges the manner in which they were introduced.[2]

[2]We also note that appellant does not contend that he did not receive written conditions of his probation.

He contends the court could not admit the conditions by judicial notice. The cases he cites to support his position do not.

Carr does not hold that a court may not take judicial notice of evidence; in *Carr* the court held that the judge could not rely upon his own "common knowledge" regarding the value of timber in his district to determine the value of timber, a disputed issue of fact in the case. 92 Ark. at 365, 122 S.W. at 662. Nor does *Southern Farmers Association, Inc.*, stand for the proposition that a court cannot take judicial notice of its own records. In *Southern Farmers Association, Inc.*, the court held that it was not proper for a circuit court to take judicial notice of the record and proceedings of a court in another county. Neither of these cases prohibits what the court did here: take judicial notice of *its own record in the same case file.* "[W]hile it is true that courts cannot take judicial notice of their own records in other cases pending therein . . . it is, nevertheless, true that a court does take judicial notice of pleadings upon which it has passed judgment and of those judgments in the particular case then under consideration." *Parker v. Sims*, 185 Ark. 1111, 1118, 51 S.W.2d 517, 520 (1932). *See also Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991) (upholding court's judicial notice of criminal information, which was part of the court's record in the case). We hold that the circuit court did not abuse its discretion by taking judicial notice of its own case file in the same case.

For his second point on appeal, appellant contends that the evidence was insufficient to revoke his probation because he testified that he suffers from various medical ailments,

draws disability, and attempted to find a suitable place to live. In order to revoke probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We do not reverse a trial court's findings on appeal unless they are clearly against the preponderance of the evidence, *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003), and, because a determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004).

One of the conditions of appellant's probation was that appellant must not commit a criminal offense punishable by imprisonment. Failing to comply with the sex offender registration and reporting requirements is a violation of Ark. Code Ann. § 12-12-904 (Supp. 2009). Mr. Henry testified that he informed appellant on September 17, 2008, that he had thirty days to provide an address for the registry. He also told appellant that he could not use the address of 136 Stanage Terrace for registration purposes because it was less than 2,000 feet from a daycare facility. Mr. Henry testified that the daycare facility and Lakeside Residential Care "share[d] a backyard." Appellant admitted that he had several conversations with Mr. Henry in which Mr. Henry told him he could not live at Lakeside Residential Care but that he did not move or provide another address for the registry. We hold that this evidence

supports the circuit court's finding that appellant violated a condition of his probation and that its finding is not clearly against the preponderance of the evidence. Accordingly, we affirm his conviction.

Affirmed.

VAUGHT, C.J., and KINARD, J., agree.