Cite as 2010 Ark. App. 217

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-1045

RECHO BERRY, APPELLANT V. STATE OF ARKANSAS, APPELLEE	**Opinion Delivered** MARCH 3, 2010 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT [NO. CR-06-453, CR-07-380] HONORABLE BARBARA ELMORE, JUDGE, AFFIRMED

KAREN R. BAKER, Judge

Appellant Recho Berry challenges the revocations of his probations on forgery and battery charges alleging that the trial court erred in finding that appellant fully understood the terms and conditions of his probation and that he willfully disobeyed those rules. We find no error and affirm.

On July 28, 2006, appellant Recho Berry was charged with forgery in the second degree. On August 9, 2007, he entered a guilty plea for which he received a sentence of 60 months' probation with 36 months supervised by the Department of Community Correction. Appellant signed a document entitled "Conditions of Suspension or Probation" in which he agreed, among other things, to report to his probation officer as directed, pay a $25 per month supervision fee, pay $1450 in costs and fees, and not "commit any criminal offense punishable

by imprisonment." Appellant also signed his initials next to each individual condition in the conditions document.

On September 17, 2007, appellant was charged with battery in the second degree. On February 25, 2008, appellant entered a guilty plea for which he received a sentence of 60 months' probation with 36 months supervised. In relation to this plea, he again signed a "Conditions of Suspension or Probation" in which he agreed, among other things, to report to his probation officer as directed, pay a $25 per month supervision fee, pay court costs and fees totaling $1070, and not "commit any criminal offense punishable by imprisonment."

Appellant has a history of mental illness and was evaluated for the purposes of his final hearing on the petition to revoke probation to determine his competence. That evaluation was performed by Dr. Paul Deyoub, and it was Dr. Deyoub's determination that appellant was fit to proceed. His evaluation revealed appellant had an IQ of 65, and contained diagnoses of depressive disorder, malingering, borderline intellectual functioning, and antisocial personality disorder. Despite these diagnoses, Dr. Deyoub found that appellant had no mental disease or defect, could form the requisite culpable mental state, could appreciate the criminality of his conduct, and knew how to conform his behavior to the law.

The trial court proceeded to a final hearing on the matter. At the revocation hearing held on June 9, 2009, the court admitted without objection the judgment and commitment orders, guilty-plea agreements, payment order, and probation-condition document from both of the Lonoke County cases. In addition, the State entered into evidence, also without

objection, two judgment-and-commitment orders reflecting the Prairie County guilty-plea convictions for Second-Degree Battery and Second-Degree Escape. Appellant's probation officer, John Callahan, testified that he had taken over appellant's probation when it was transferred from Lonoke to Prairie County. He stated that appellant had reported twice to his office for intake but had failed to report as ordered after the initial intake process. He also testified that appellant had not made any payments on the costs and fees and noted that he had received new charges in violation of his probation conditions. The trial court found appellant willfully violated the terms and conditions of his probation and sentenced him to 6 years in the Arkansas Department of Correction. At that hearing, the only testimony was from Officer John Callahan. A judgment and commitment order was filed on June 9, 2009, and a notice of appeal was filed on June 24, 2009.

On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence; and because the determination of a preponderance of the evidence turns on the questions of credibility and weight to be given testimony, on review, the appellate courts will defer to the trial judge's superior position. *Bedford v. State*, 96 Ark. App. 38, 237 S.W.3d 516 (2006). The State has the burden to prove a violation of a condition of probation by a preponderance of the evidence. *Id.* This burden is not as great in a revocation hearing; therefore, evidence that is insufficient for a criminal conviction may be sufficient for revocation. *Id.* If a court finds by a preponderance of the evidence that a defendant has inexcusably failed to comply with a condition of his or her probation, it may

revoke the probation. *Id.*; *see also* Ark. Code Ann. § 5-4-309(d) (Repl. 2006). The State only needed to show that the appellant violated one of the conditions. *Beebe v. State*, 2009 Ark. App. 113, 303 S.W.3d 89.

Appellant's assertion of error is premised on two arguments. First he argues that the State failed to establish that Officer Callahan was present when the terms and conditions of probation were read to appellant or that he ever discussed and explained those conditions to him.

Appellant cites no authority for this proposition, and we do not consider an argument when the appellant presents no authority or convincing argument in its support, and it is not apparent without further research that the argument is well taken. *Winbush v. State*, 82 Ark. App. 365, 371, 107 S.W.3d 882, 886 (2003). Furthermore, the State was not required to show that the officer was present or that the officer explained and discussed the conditions of probation with appellant. The relevant inquiry is whether appellant had notice of the conditions of probation. *See* Ark. Code Ann. § 5-4-303(g)(Repl. 2006 & Supp. 2009). The purpose of providing the conditions in writing is to prevent confusion on the probationer's part. *See Nelson v. State*, 84 Ark. App. 372, 141 S.W.3d 900 (2004). Appellant's signature on the documents listing the conditions is sufficient to support the trial court's determination that appellant knew, understood, and consented to the conditions.

Appellant also alludes to his intelligence quotient and references counsel's difficulty in communicating with him being sufficient to raise doubt as to whether appellant violated the

terms of his probation without excuse. Dr. Deyoub's evaluation included the summation that appellant was of sufficient mental acuity to formulate the requisite culpable mental state and understand the nature of the violation and could conform his behavior to the requirements of the law. Accordingly, the trial court did not err in revoking appellant's probations.

Affirmed.

PITTMAN and HENRY, JJ., agree.