

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-1104

JAMES FORREST, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 7, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-2007-384-2]

HONORABLE ROBERT H. WYATT,
JR., JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Here, we consider whether the circuit court’s decision to revoke the probation of appellant, James Forrest, Jr., was clearly against the preponderance of the evidence. We affirm the court’s decision.

The circuit court placed appellant on probation for two years after he pleaded guilty to the crime of possession of crack cocaine. Appellant’s probation was conditioned in part on not using “any controlled substance” and paying certain fines, fees, and costs. Appellant signed the conditions, thus acknowledging that he had “read” and “understood” the conditions and that he further understood that if he violated the conditions, the court could revoke his probation.

The State later filed a petition to revoke appellant’s probation, alleging that appellant had tested positive for marijuana on six occasions, had admitted to using marijuana on two

other occasions, and had tested positive for both marijuana and cocaine on another occasion. The petition further alleged that appellant was delinquent on his payments.

At the revocation hearing, appellant's probation officer testified that when appellant was placed on probation, he was read the rules of probation and he signed the rules, acknowledging that he understood them. Further, the probation officer testified that appellant had tested positive for marijuana on six occasions, had admitted to using marijuana on two other occasions, and had tested positive for both marijuana and cocaine on two other occasions. The probation officer further testified that appellant was delinquent on his payments in the amount of \$1245. Following the presentation of this evidence, the State rested. Appellant did not testify or present any evidence. The circuit court found that appellant had violated the conditions of his probation by testing positive for cocaine and marijuana and by being delinquent on his payments. The court revoked appellant's probation and sentenced him to six years' imprisonment.

Appellant raises two points on appeal challenging the sufficiency of the evidence supporting the two grounds for revoking his probation. We observe that if the circuit court finds by a preponderance of the evidence that the defendant has "inexcusably failed" to comply with a condition of his probation, the court may revoke that probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). On appeal, we do not reverse the circuit court's decision to revoke unless it is clearly against the preponderance of the evidence. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988).

First, appellant asserts that the “record is void of testimony or evidence that [he] knew and understood” that the condition of probation prohibiting the use of controlled substances “encompassed cocaine and/or marijuana,” which were the controlled substances for which he tested positive. He contends that there is no language in the condition that would put him on notice that marijuana and cocaine were controlled substances within the meaning of the condition.

Contrary to appellant’s assertion on appeal, the record contains evidence that he knew and understood that the condition of probation prohibiting the use of controlled substances prohibited use of cocaine and marijuana. As testified to by the probation officer, and as evidenced by the document containing the conditions of probation, appellant read or was read the conditions, and he acknowledged that he had read and understood the conditions. This evidence indicates that appellant in fact understood the condition. Further, appellant failed to testify or present any evidence that he labored under a mistaken belief that cocaine and marijuana were not controlled substances. And it is clear that cocaine and marijuana are controlled substances. Ark. Code Ann. §§ 5-64-101(5), 101(18)(B)(iv); 5-64-215, 401 (Supp. 2009). Moreover, appellant was on probation for possessing cocaine, a controlled substance, which should have indicated to appellant that cocaine was a controlled substance. Based on the evidence presented, we cannot say that the court’s decision to revoke appellant’s probation on this ground was clearly against the preponderance of the evidence.

Second, appellant contends that the State failed to present sufficient evidence that his

failure to pay was willful or present evidence of when the payments were due. The State has the burden of proving by a preponderance of the evidence that the failure to pay was inexcusable. *Reese, supra*. However, once the State has introduced evidence of nonpayment, the burden of going forward shifts to the defendant to offer some reasonable excuse for his failure to pay. *Id.* Here, the State presented evidence that appellant was delinquent on his payments, and appellant did not testify or offer any evidence that his failure to pay was not inexcusable. Accordingly, we cannot say that the court's decision to revoke on this basis was clearly against the preponderance of the evidence.

Affirmed.

ROBBINS and HENRY, JJ., agree.