

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-123

ROLAND KAMGNO

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 19, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NOS. CR-2006-2258;
CR-2007-1016; CR-2007-2063]

HONORABLE MICHAEL A.
MAGGIO, JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to one felony and two misdemeanor violations of the Arkansas Hot Check Law, Ark. Code Ann. § 5-37-302 (Repl. 2006), and was placed on probation. A petition to revoke was filed within the probationary period alleging that appellant violated the conditions of his probation by failing to report to his probation officer, failing to pay fines and fees, failing to complete community service, and failing to report a change of address as required by the written conditions of his probation. The revocation petition was later amended to include an additional failure to report committed after the initial petition was filed. After a hearing, the trial court found that appellant violated at least one of the conditions of his probation, revoked the probation, and ordered that he serve one year in a regional punishment facility. On appeal, appellant admits that he violated the conditions of

his probation but argues that the trial court erred in failing to find that these violations were excusable. We affirm.

A trial court may revoke a defendant's probation at any time prior to the expiration of the probationary period upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). The State bears the burden of proof in the trial court, but it need only show that the appellant committed one violation in order to sustain a revocation. *Watlington v. State*, 2010 Ark. App. 37. Where the sufficiency of the evidence is challenged on appeal from an order of revocation, we will not reverse the trial court's decision unless its findings are clearly against the preponderance of the evidence; in making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Gossett v. State*, 87 Ark. App. 317, 191 S.W.3d 548 (2004).

Appellant concedes that he failed to report to his probation officer more often than not, but asserts that his failures were excusable. In support of this argument, he states that he is a foreign national attending college in Arkansas and that his visa requires him to maintain his student status. Although he has an automobile, he asserts that he had neither the time to devote to the thirty-mile drive from his residence in Little Rock to the Faulkner County probation office in Conway nor sufficient funds to purchase gasoline for the trip. He stated that he was going to school full-time and working either full-time or part-time during this period, leaving him alternately with insufficient time or insufficient money to enable him to

fulfill the reporting condition of his probation. Appellant testified that he had a telephone and that he made many attempts to contact his probation officer regarding his inability to report, but that his calls were not answered or returned.

Appellant's testimony was directly contradicted by that of his probation officer, Brenda Willis, who stated that appellant failed to contact her about his absences and that, if he had done so and explained that he was unable to report because of schedule conflicts or other difficulties, there would have been no problem. She testified that appellant was previously supervised by probation officer Jeanna Simmons of the Little Rock office. She stated that Simmons left appellant a message on June 17, 2008, directing him to report. Simmons next sent him a letter on July 15, 2008, then made a visit to the Little Rock address appellant provided on August 28, 2008. Appellant was not there, and Simmons left him a card directing him to report. Appellant never reported, and a warrant for his arrest was issued on September 16, 2008. Appellant was released on bond on the condition that he was to report immediately to the Conway probation office. Appellant failed to do so. He eventually reported on March 22, 2009, at which time he was arrested. He appeared before the trial court on April 24, 2009, and was again released with directions to report to the probation office immediately. He again failed to do so. Willis testified that appellant finally reported to her office on May 5, 2009, and stated that he knew that he was supposed to report but that he did not have time because he was going to school and because reporting to his probation officer was not important.

Failure to report to one's probation officer has been held to be excusable where the circumstances were dire and the probationer contacted his probation officer regarding his difficulties. *See, e.g., Baldridge v. State*, 31 Ark. App. 114, 789 S.W.2d 735 (1990). Assuming, without deciding, that repeated conflicts between a college schedule and probation reporting requirements might render repeated failure to report excusable, the failure to report was not excusable in the present case because a finding that appellant also failed to contact his probation officer regarding his reporting difficulties is not clearly against the preponderance of the evidence. Officer Willis testified that appellant did not contact her concerning his absences. Appellant testified that Officer Willis was lying. The question was one of credibility, and we cannot say, on this record, that the trial court clearly erred.

Affirmed.

GLADWIN and GLOVER, JJ., agree.