

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR09-144

JUSTIN CHARLES TEAGUE  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered** June 2, 2010

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT  
[NOS. CR-05-1049D, CR-06-679]

HONORABLE JAMES O. COX,  
JUDGE

AFFIRMED; MOTION GRANTED

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**M. MICHAEL KINARD, Judge**

Justin Charles Teague appeals from the trial court's revocation of his suspended sentence. Appellant's attorney has filed a no-merit brief and a motion to withdraw as counsel. We affirm the judgment of the trial court and grant counsel's motion to withdraw.

Appellant pled guilty to charges of felon in possession of a firearm and possession of drug paraphernalia on September 30, 2005. He received three years' imprisonment in the Arkansas Department of Correction with seven years' suspended imposition of sentence. The terms of his suspended sentence required that appellant not violate any federal, state, or municipal law; not frequent places where alcoholic beverages were sold; not associate with persons with criminal records; and pay a public-defender fee in the amount of \$100.

In June 2006, appellant pled guilty to charges of breaking or entering and second-degree forgery. Appellant received sixty months' suspended imposition of sentence. The

terms of appellant's suspended imposition of sentence for the 2006 conviction provided that he was not to violate any federal, state, or municipal law; not to frequent places where alcoholic beverages were sold; not to associate with persons with criminal records; and that he was to pay restitution, a public-defender fee, and a DNA fee.

On July 8, 2008, the State filed a petition to revoke in which the State alleged that appellant committed the offenses of possession of methamphetamine with intent to deliver and possession of drug paraphernalia. The State further alleged that appellant failed to pay the public-defender fee as required under the terms of his 2005 suspended sentence. In addition, the State alleged that appellant failed to pay restitution, the public-defender fee, and the DNA fee as required under the terms of his 2006 suspended sentence.<sup>1</sup> Following a hearing on the State's petition to revoke, the circuit court found that appellant violated the terms of his suspended sentences by 1) drinking beer in a tavern; 2) associating with persons with criminal records; and 3) failing to pay fines. Appellant was found in contempt for failure to pay restitution in the 2002 case, although no punishment was imposed. In a judgment and commitment order entered November 12, 2008, the circuit court sentenced appellant to seven years' imprisonment in the Arkansas Department of Correction with an additional three years' suspended imposition of sentence. Appellant filed a timely notice of appeal to this court.

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<sup>1</sup>The State also alleged that appellant failed to pay restitution in a 2002 case, although there is no other documentation in the record relating to a case from 2002, save for a notation on the 2005 judgment and commitment order that a petition to revoke in the 2002 case was being withdrawn.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), counsel for appellant has filed a brief and motion to withdraw arguing that there are no meritorious points for reversal. Included in the brief is an abstract of the revocation hearing, including all of the rulings adverse to appellant. Appellant was given the opportunity to file *pro se* points for reversal, but did not do so. Because appellant did not file any *pro se* points for reversal, the State elected not to file a brief.

The only objection raised during the hearing was a relevancy objection. During cross-examination of appellant, the State asked appellant where he would buy and use drugs. Appellant's counsel objected on the basis that the question was not relevant. The circuit court overruled the objection, stating, "He's here on PTR [revocation] relative to that." The trial court's overruling of appellant's objection does not raise a meritorious point for reversal. Appellant's revocation was not based upon anything contained in his answer to the question.

The circuit court also revoked appellant's suspended sentence due to him consuming alcohol in a tavern and associating with persons with a criminal record, violations which were not alleged by the State in the petition to revoke. It is a violation of a defendant's right to due process to revoke based on a violation that is not enumerated in the revocation petition. See *Hill v. State*, 65 Ark. App. 131, 985 S.W.2d 342 (1999) (citing *Robinson v. State*, 14 Ark. App. 38, 684 S.W.2d 824 (1985)). However, this is not a valid point for reversal in this case because the argument does not address the other basis for revocation. The State is only

required to prove one of the grounds contained in the revocation petition. *Phillips v. State*, 101 Ark. App. 190, 272 S.W.3d 123 (2008).

The State produced restitution records showing that appellant was behind on his restitution in one case and had not paid any restitution in another case. Appellant admitted at the hearing that he failed to pay restitution and did not provide a legitimate explanation for his failure to pay. If a circuit court places a criminal defendant on probation or imposes a suspended imposition of sentence for an offense and orders that the defendant pay restitution to the victims of the offense, the failure to pay that restitution is by itself a valid ground for revocation. Ark. Code Ann. § 5-4-303(h)(2)(B)(ii) (Repl. 2006). We affirm the revocation of appellant's probation and grant counsel for appellant's motion to withdraw.

Affirmed; motion granted.

BAKER and BROWN, JJ., agree.