

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-33

ANGELA AQUILINO

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR-2006-1210]

HONORABLE DAVID REYNOLDS,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty to criminal attempt to procure prescription drugs by fraud and was placed on probation, subject to a number of conditions, for a period of two years. During that period, the State filed a petition to revoke appellant's probation, alleging, *inter alia*, that she had violated the conditions by failing to pay fines and probation fees and failing to abstain from the use of controlled substances. After a hearing, her probation was revoked and she was sentenced to two years' imprisonment. On appeal, appellant argues that the trial court clearly erred in finding that she willfully and inexcusably violated the conditions of her probation. We affirm.

In revocation cases, the State must prove by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of her probation. *Graves v. State*, 2010 Ark. App. 32. When the sufficiency of the evidence is challenged on appeal from a

Cite as 2010 Ark. App. 516

revocation, we will affirm unless the trial court's findings are clearly against the preponderance of the evidence. *Anglin v. State*, 98 Ark. App. 34, 249 S.W.3d 836 (2007). We defer to the superior position of the trial court on matters of credibility of the witnesses and weight to be given to the evidence. *Tyson v. State*, 2009 Ark. App. 856.

Appellant concedes that evidence was presented of each alleged violation, including admissions of each by appellant during her testimony. However, she argues that the State failed to prove that the violations were inexcusable because it failed to affirmatively show that she could afford to make the required payments and because she testified that her multiple positive drug screens were the result of her using leftover drugs from previous prescriptions to alleviate back pain resulting from a former electrical shock injury. We cannot agree.

Once the State introduces evidence of noncompliance in a revocation hearing, the defendant then bears the burden of going forward with some reasonable excuse for the noncompliance. *Anglin, supra*. Here, appellant admittedly failed to make payments toward her fines and fees, and she offered nothing in the way of an excuse. Moreover, she admittedly tested positive for opiates and amphetamines, but she offered no evidence, medical or otherwise, to support her claim that she had previously been shocked, that she had been prescribed opiates, or that such medication was required for her current condition. Having admitted the violations, her excuses were wholly a matter of credibility. We cannot say that the trial court clearly erred because it did not believe appellant's testimony.

Affirmed.

GLADWIN and GLOVER, JJ., agree.