

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-73

TRACY PATRICK

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 30, 2010

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2005-1133]

HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED; MOTION GRANTED

ROBERT J. GLADWIN, Judge

In 2006, appellant pled guilty to possession of a controlled substance and was sentenced to seventy-two months' supervised probation, accompanied by an imposition of fines and costs in the amount of \$2,750 to be paid at the rate of fifty dollars per month beginning September 1, 2006. Subsequently, the State filed a petition to revoke, alleging that appellant violated the conditions of his probation by (1) failing to pay fines and costs as directed; (2) failing to report to probation as directed; (3) failing to pay probation fees; (4) failing to notify sheriff and probation office of current address and employment; and (5) departing from approved residence without permission.

After a hearing in October 2009, the trial court revoked appellant's probation and sentenced appellant to five years' imprisonment in the Arkansas Department of Correction,

followed by a five-year suspended imposition of sentence, finding that appellant violated the conditions of his probation by (1) failing to pay fines and costs as directed; (2) failing to report to probation as directed; (3) moving out of the jurisdiction without permission; and (4) failing to pay probation fees as directed.

Appellant's counsel has filed a no-merit brief and a motion to be relieved as counsel, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k)(1) (2010), asserting that there is no nonfrivolous argument to be made in support of an appeal. The clerk of this court furnished appellant a certified copy of his counsel's brief and motion to be relieved, informing appellant that he had the right to file pro se points for reversal. Appellant has not filed any pro se points.

As there are no other adverse rulings to discuss, the sole issue is whether there was sufficient evidence to support the trial court's revocation of appellant's probation. On appeal of a revocation, our review is directed toward determining whether the trial court's findings are clearly against the preponderance of the evidence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006). In order to revoke the terms of probation, the State must prove by a preponderance of the evidence that the defendant violated a condition of his probation. *Costes v. State*, 103 Ark. App. 171, 287 S.W.3d 639 (2008). Whether this standard is met is determined largely by questions of credibility and the weight to be given to the testimony, and we defer to the trial court's superior position with regard to those issues. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). After evaluating the record under the proper standard

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of review, we hold that the revocation of Patrick's probation was not clearly against the preponderance of the evidence. As such, we affirm the revocation and grant counsel's motion to be relieved.

Affirmed.

ROBBINS and BAKER, JJ., agree.