Cite as 2010 Ark. App. 732

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 10-204

	Opinion Delivered NOVEMBER 3, 2010
KEVIN GETTRIDGE APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. CR2005-1023]
V.	
STATE OF ARKANSAS APPELLEE	HONORABLE JAMES O. COX, JUDGE
	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Kevin Gettridge appeals the revocation of his suspended imposition of sentence (SIS) by the Sebastian County Circuit Court. Appellant was on suspension based upon two guilty pleas in two criminal cases[1] when the State filed a petition in October 2009 seeking to revoke both. The State alleged that appellant violated the SIS terms by failing to pay fines, costs, and fees as ordered, and by committing the offense of criminal non-support. Appellant argues, as he did before the trial judge, that while he did not pay either obligation, he presented a reasonable excuse for nonpayment. We affirm.

[1] One criminal case, CR-2005-1023, was for possession of marijuana with intent to deliver and possession of an instrument of crime. The other criminal case, CR-2007-1136, concerned possession of marijuana, second offense.

A trial court may revoke a defendant's suspension at any time prior to the expiration of that period if it finds by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his SIS. *See* Ark. Code Ann. § 5-4-309(d) (Supp. 2009). We will not reverse the trial court's decision unless it is clearly against the preponderance of the evidence. *Owens v. State*, 2009 Ark. App. 876. Determination of the preponderance of the evidence turns largely on questions of credibility and the weight of the testimony, and for that reason we will defer to the trial judge's superior position. *Id.* We will affirm a trial court's revocation even if only one ground for revocation is supported by the evidence. *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

Once the State has introduced evidence of non-payment, then the burden shifts to the defendant to offer some reasonable excuse for the failure to pay. *Owens v. State*, *supra*. Factors to be considered include employment status, earning ability, financial resources, the willfulness of the failure to pay, and any other special circumstances bearing on the ability to pay. Ark. Code Ann. § 5-4-205(f)(3) (2009). Failure to seek employment or to make bona fide efforts to borrow money to pay may support a finding that the failure to pay was willful. *Tyson v. State*, 2009 Ark. App. 856. Regarding criminal charges, evidence that is insufficient to support a conviction may be sufficient for a revocation because the burden of proof is lower. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002).

Here, the testimony at the January 2010 hearing revealed that appellant was the father of a five-year-old daughter. The mother of that child, Manesha Vann, testified that an order

of paternity established appellant as the father and that a $41-per-week child-support order was entered in 2006. Ms. Vann said there were only three payments made pursuant to the child-support order, the last one being in July 2007. She agreed that they lived together "off and on" in years gone by but that during those times, appellant did not work or pay for anything like child care, food, rent, or clothing. She said he was able-bodied and could work if he wanted to, but that he does not see his daughter nor does he pay support. According to Ms. Vann, they had not lived together for a long time, as far back as 2006. She testified that appellant told her that he was not going to pay the child support.

Appellant testified that he was aware of the August 2006 child-support order but that he thought the order was only obtained so that the child could get free daycare. He said this was the agreement he and Ms. Vann had reached. Appellant added that he was not worried about child-support payments because they received public housing and he occasionally bought the child shoes and school supplies. But, appellant acknowledged that he was supposed to pay the office of child support, not the mother or child directly.

The State entered into evidence a February 2007 order finding appellant in contempt of court for failure to pay his accruing child support, at that point $1430 past due. Appellant said he was aware of a warrant for his arrest regarding the child support. Appellant said he would now be able to pay the child support because he had been employed since November 2009 making about $400 per week. He stated that he had a current girlfriend who he took out on a date every week when he got paid. He added that he could pay the child support

"tomorrow" and every week in the future, although he could not back in 2008 because he was in jail.

On cross examination, appellant testified that he had paid his own bail bond fee of about $200 upon his arrest for the revocation petition. Appellant said he was confused, thinking this revocation hearing was really about setting the amount of past-due child support. He blamed Ms. Vann for not being able to see his daughter, and he thought that after this hearing, she would be ordered to allow him visitation and he would be ordered to pay a child-support arrearage.

As for the alleged violation of conditions of his suspension, appellant remembered that he agreed to pay $1250 on the first criminal plea and $190 on the other criminal plea. Ledger sheets showed not one payment in any amount on either case. But, he said he had written a note while he was still in jail asking that all the fines and costs be excused, and that he had received a responsive note stating that those fines and costs were "wiped away." He had no documents to back up that claim.

The judge rendered his findings at the conclusion of the hearing, calling appellant's testimony "fascinating" and stating that he did not believe one bit of it. The judge stated disbelief of appellant's claim of confusion about his duty to pay child support since 2006. The judge found by a preponderance that appellant failed, without just cause, to pay his court-ordered child support and failed to pay "a penny" toward his fines and costs associated with both criminal cases. This appeal followed.

Appellant argues in his brief that "it is obvious that his lack of payment toward fines and costs and child support is due to a just cause." We disagree. We defer to the trial court in determinations of credibility, and the trial judge did not believe any of appellant's explanations. Appellant acknowledged failure to pay the required payments on his conditions as well as his weekly child-support obligation. Although he offered excuses for those failures, they were not deemed reasonable excuses. *See Thompson v. State*, 2009 Ark. App. 620.

We hold that the trial court did not clearly err in finding that appellant inexcusably violated the conditions of his suspended impositions of sentence.

Affirmed.

HART and GRUBER, JJ., agree.