

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-740

MELISSA DIANE MEADOR
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered DECEMBER 15, 2010

APPEAL FROM THE POLK
COUNTY CIRCUIT COURT
[NO. CR-08-22-1]

HONORABLE JERRY WAYNE
LOONEY, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Melissa D. Meador appeals the circuit court's revocation of her probation, contending that the court erred in determining that there was sufficient evidence that she violated terms of the probation. We hold that the decision to revoke was not clearly against the preponderance of the evidence, and we affirm.

Meador was charged with possessing a controlled substance and obtaining a controlled substance by fraud, both Class C felonies. A judgment and commitment order of July 14, 2008, shows that the circuit court accepted her negotiated pleas of guilty; sentenced her on each count to sixty months' probation, subject to certain conditions; fined her; and assessed court costs against her. In a July 30, 2009 petition to revoke and in three amended petitions, the State alleged that Meador had inexcusably failed to comply with conditions of her probation. At the conclusion of a March 2010 revocation hearing, the court revoked Meador's probation and sentenced her to four years' imprisonment in a regional punishment facility.

In order to revoke probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of the probation. *Gray v. State*, 2010 Ark. App. 159. The burden of proof in a revocation proceeding is less than that required for a conviction in a criminal trial, and the State need only prove that the defendant committed one violation of probation conditions. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004); *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

The conditions of Meador's probation included timely and fully paying fines and costs, completing a drug-court program, leading a law-abiding life, complying with probation supervision as directed, refraining from using or possessing controlled substances without a prescription, performing eighty hours' community service, abstaining from alcohol use, and paying probation-supervision fees of \$25 a month. In January 2009, as a drug-court incentive for good progress and upon the recommendation of her probation officer, the circuit court amended probation by waiving supervision fees from November 2008 to April 2009. Probation was amended in May 2009 by adding twenty hours' community service after the court found that Meador had incurred a drug-court sanction for failing to provide urine screens to her probation officer and had admitted using and having positive drug screens for THC, opiates, and benzodiazepines. In July 2009, after finding that Meador had incurred drug-court sanctions because of more than ten positive drug screens, the court amended probation by adding 456 hours' jail time.

The State's final amended petition for revocation alleged that Meador failed to pay

finer/costs, complete drug court, lead a law-abiding life, comply with a program of supervision as directed, refrain from use/possession of a controlled substance, perform community service, abstain from use of alcohol, and pay supervision fees/assessment costs. In oral findings at the conclusion of the revocation hearing, the court found that the drug-court program had bent over backward to help her, that she had twenty-two positive drug tests and her positive screens could not be explained away, that she had incurred a felony conviction in another county, and that she continued to ignore the “rules of probation office.” The court then revoked probation, and on March 18, 2010, entered the judgment and commitment order that Meador now appeals.

Meador challenges the sufficiency of the evidence to support seven allegations in the State’s petition for revocation. She argues in part that some of her probation violations were an excusable breach merely bolstering the State’s case and were acts for which she was punished in drug court. Because she did not raise this argument below, it is barred on appeal and we will not address it. *See Robinson v. State*, 2009 Ark. App. 430 (noting that even constitutional objections relating to fundamental constitutional rights can be waived if not adequately preserved).

In a revocation proceeding the State must prove its case by a preponderance of the evidence, and on appellate review we do not reverse the trial court’s decision unless it is clearly against the preponderance of the evidence. *Anglin v. State*, 98 Ark. App. 34, 249 S.W.3d 836 (2007). Because a determination by a preponderance of the evidence turns on

questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Cheshire v. State*, 80 Ark. App. 327, 95 S.W.3d 820 (2003). Under these standards, the evidence is as follows.

Probation Officer Ashley George testified that Meador pled guilty to furnishing prohibited articles in the Sevier County Jail, admitted to purposefully providing another person's urine to pass a drug screen, tested positive on other drug screens, and failed to follow protocol to establish a chain of custody on other screens. She also testified that there had been more than twenty positive drug tests, and Meador herself admitted use on two occasions. This testimony constituted sufficient evidence that Meador violated conditions of her probation regarding drug use and failing to lead a law-abiding life. The circuit court's decision to revoke was not clearly against a preponderance of the evidence.

Affirmed.

ROBBINS and BROWN, JJ., agree.