

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR11-332

RAYMOND JOHNSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED DECEMBER 14, 2011

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[NO. CR 2006-675-1 & 2006-821-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Raymond Johnson's suspended sentences were revoked in Union County Circuit Court on January 18, 2011, when the trial court found that he had violated the terms and conditions of his suspended sentences. Appellant contends that the State failed to introduce sufficient evidence that he committed a criminal offense punishable by incarceration. We affirm appellant's revocation.¹

Appellant had two previous convictions wherein he received suspended sentences that were conditioned upon, among other things, his not committing a criminal offense punishable by incarceration and not owning or possessing a firearm. On August 6, 2010, the State filed a petition to revoke appellant's suspended impositions of sentence based on the allegations that

¹This is appellant's third attempt to appeal the revocation of his suspended sentences. See *Johnson v. State*, 2011 Ark. App. 697.



appellant had committed two counts of theft by receiving and one count of possession of a firearm by certain persons.

At the revocation hearing held December 9, 2010, David Edwards testified that on May 22, 2007, he read to appellant his conditions of release and appellant understood and initialed the conditions. The State presented the following evidence: appellant was arrested after his driver's license and documents concerning his incarceration in the Arkansas Department of Correction were found in a stolen camper trailer near an oil well in Union County; the camper trailer, along with other tools and equipment, had an estimated value of \$24,330 and were reported stolen on May 31, 2009; the owner of the trailer located one of his stolen lawn mowers in Spearsville, Louisiana, and the person in possession of the mower told him that it had been acquired from appellant; an oil-well pumper notified the sheriff's office about finding the camper trailer and later identified appellant as the man he had seen near the camper from the photograph of appellant found in the camper; also found in the camper was a twelve-gauge shotgun with an extended tube and magazine.

The trial court found that appellant had violated the terms and conditions of his suspended sentences and sentenced him to consecutive three-year sentences in the Arkansas Department of Correction. Appellant timely appeals, arguing that there was insufficient evidence adduced to support the revocations.

A court may revoke a defendant's suspended sentence only if the State proves by a preponderance of the evidence that the defendant failed to comply with the conditions. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). On appellate review, the trial court's findings



are upheld unless they are clearly against a preponderance of the evidence. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Deference is given to the circuit court's superior position to weigh the evidence and determine witness credibility. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005). In order to revoke a suspended sentence, the State need only prove that the defendant violated one condition of his suspended sentence. *Ramsey v. State*, 60 Ark. App. 206, 959 S.W.2d 765 (1998). Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Lamb v. State*, 74 Ark. App. 245, 45 S.W.3d 869 (2001).

Appellant contends that the State failed to introduce substantial evidence that he committed a criminal offense punishable by incarceration. He recites the evidence introduced by the State that the camper trailer and tools had been stolen; that the owner was told by someone in Spearsville, Louisiana, that they purchased a lawn mower from appellant; that an oil-well pumper indicated that he recognized appellant from a picture that was found in the trailer; and that no one saw appellant in the trailer. Appellant argues that the foregoing evidence is insufficient to revoke his suspended sentences for committing a criminal offense punishable by incarceration.

Conversely, the State contends that the trial court's revocation is supported by a preponderance of the evidence. Testimony showed that the camper found at the oil well in June 2010, had been stolen in 2009. Additionally, appellant was seen near the camper by the oil-well pumper, and officers found appellant's driver's license and papers relating to his incarceration in the Arkansas Department of Correction inside the camper. Also found was



Cite as 2011 Ark. App. 777

a twelve-gauge shotgun in the camper. Based on this evidence, the trial court determined that appellant was in violation of the terms and conditions of his suspended imposition of sentence. We hold that the trial court's determination is not clearly against the preponderance of the evidence.

Affirmed.

VAUGHT, C.J., and MARTIN, J., agree.