

Cite as 2020 Ark. App. 27
ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-18-849

TIMOTHY LEE MILLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: January 15, 2020

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. 02CR-15-17]

HONORABLE SAM POPE, JUDGE

AFFIRMED; MOTION TO WITHDRAW
GRANTED

MIKE MURPHY, Judge

This is a companion case to *Miller v. State*, 2020 Ark. App. 28 (case No. CR-18-850) (*Miller I*), also handed down today. In this case, Timothy Miller’s probation was revoked on the basis of evidence presented by the State in *Miller I*. Thus, every ruling adverse to Miller in this revocation is the same as those discussed in *Miller I*. Miller’s counsel has filed a no-merit brief and a motion to be relieved pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k), stating that there are no meritorious grounds to support an appeal. No pro se points were filed.

The only ruling adverse to Miller not discussed in *Miller I* is the revocation of his probation. As a result of the evidence presented at trial, and as discussed in *Miller I*, the court found Miller in violation of the terms and conditions of his suspended imposition of

sentence and sentenced him to a term of seventy-two months in the Arkansas Department of Correction to run concurrent with the sentence imposed in *Miller I*.

The standard of review for a challenge to the sufficiency of the evidence on appeal is different for convictions and revocations. To support a conviction, we review the evidence most favorable to the State for substantial evidence. *Perez v. State*, 2016 Ark. App. 291, 494 S.W.3d 431. In revocation proceedings, however, we look to see only if the trial court's decision to revoke is supported by a preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). Evidence is substantial if it is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Perez, supra*. On the other hand, a preponderance of the evidence is evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. *Meador v. State*, 10 Ark. App. 325, 664 S.W.2d 878 (1984). Thus, evidence that may not be sufficient to convict can be sufficient to revoke, due to the State's lower burden of proof. *Bradley v. State*, 347 Ark. 518, 521, 65 S.W.3d 874, 876 (2002).

In *Miller I*, we agreed with counsel that any challenges to the sufficiency of the evidence for the charges of delivery of methamphetamine within 1000 feet of a school, use of a communication device in commission of a drug offense, and fleeing would be wholly frivolous and without merit. Because we reviewed the challenge to the sufficiency of the evidence using the higher standard and held it sufficient to support the convictions, we

likewise affirm the circuit court's decision to revoke Miller's suspended imposition of sentence and grant counsel's motion to withdraw.

Affirmed; motion to withdraw granted.

HARRISON and HIXSON, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

One brief only.