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ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-22-96

SCOTT STILES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 21, 2022

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT

[NOS. 17CR-19-314 & 17CR-20-
347]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

This is a revocation case. On July 6, 2020, appellant Scott Stiles pleaded guilty to Class C felony nonsupport and Class C felony failure to appear. For each of these offenses, Stiles was placed on a ten-year suspended imposition of sentence. Stiles was also ordered to pay court costs of \$190, a fine of \$500, and restitution of \$17,234.01. The conditions of his suspensions required Stiles to pay these amounts at a rate of \$65 a month beginning September 7, 2020, and also required him to pay \$1000 toward his arrears within ninety days of his plea.

On October 20, 2020, the State filed a petition to revoke Stiles's suspended sentences, alleging that he had violated the conditions by failing to make any payments

toward his court costs, fine, and restitution.¹ After a hearing held on November 5, 2021, the trial court found that Stiles violated the conditions of his suspensions by failing to pay anything toward his financial obligation. On November 9, 2021, the trial court entered an order revoking Stiles's suspended sentences and sentencing him to five years in prison followed by a five-year suspended imposition of sentence for nonsupport and a ten-year suspended imposition of sentence for failure to appear.

Stiles now appeals from the revocations and resulting sentences. On appeal, Stiles challenges the sufficiency of the evidence supporting the revocations, arguing that the State failed to prove that he inexcusably failed to pay his court costs, fine, and restitution. Stiles also argues that the trial court used an erroneous standard in concluding that he violated the conditions of his suspended sentences. We affirm.

Pursuant to Arkansas Code Annotated section 16-93-308(d) (Supp. 2021), the burden on the State in a revocation proceeding is to prove by a preponderance of the evidence that the defendant inexcusably failed to comply with a condition of his suspension or probation. The State needs to prove only one violation to sustain the revocation. *Wilcox v. State*, 2021 Ark. App. 244, 624 S.W.3d 353. We will not reverse a decision revoking a suspension or probation unless the trial court's findings are clearly against the preponderance of the evidence, and we defer to the credibility determinations made by the trial court. *Geeslin v. State*, 2017 Ark. App. 571, 533 S.W.3d 132.

¹On the following day, the State filed an amended petition to revoke that made no substantive changes and repeated its allegation that Stiles had failed to make any payments.

Lisa Wilkinson, the Crawford County fine and restitution coordinator, testified at the revocation hearing. Ms. Wilkinson testified that Stiles had made no payments toward his court-ordered court costs, fine, and restitution.

Stiles testified on his own behalf. Stiles testified that at the time he was arrested on the underlying charges, he was living at a house owned by his parents in Russellville. Stiles stated that when he was released from jail and placed on the suspended sentences on July 6, 2020, he had no way to get back to Russellville from Crawford County. Stiles lived at his brother's house in Fort Smith for the next month. During that time, Stiles was unemployed, and he acknowledged he did not look for a job. Stiles did not pay his brother anything to live there, and his brother was feeding him.

When Stiles managed to get back to Russellville a month later, he found that the house where he was living had been ransacked. Stiles stayed at the house in Russellville for the next three weeks but had to vacate after that because his father sold the property. Stiles stated that after vacating the house in Russellville, he "bounced from couch to couch for a while" and then lived in a tent for several months after that. Stiles stated that he had no transportation. Stiles stated that while in Russellville, he attempted to find employment but was unsuccessful until he got a job at AMCORP in December 2020. Stiles worked at AMCORP for four months before being arrested in April 2021 on unrelated charges. Stiles stated that he was incarcerated on the unrelated charges until being released about a month and a half before the revocation hearing.

On cross-examination, Stiles admitted that he had never made a payment toward his financial obligation. When asked whether he “could have made some payment,” Stiles answered, “Yes, sir.”

Based on this evidence, the trial court found from the bench that Stiles violated the conditions of his suspended sentences. The parties then gave their respective arguments on sentencing, and the trial court stated that it would sentence Stiles to five years in prison followed by a five-year suspended imposition of sentence. The trial court then stated, “I think they’ve showed that he had [the] opportunity to pay something. He didn’t pay anything.”

Stiles’s first argument on appeal is a challenge to the sufficiency of the evidence supporting the revocations of his suspended sentences. Stiles admits that he made no payments toward his court costs, fine, and restitution. Stiles argues, however, that the State failed in its burden to prove that his failure to pay was inexcusable.

Our caselaw provides that when the alleged violation is failure to make payments as ordered, it is the State’s burden to prove that the failure to pay was inexcusable. *Alexander v. State*, 2018 Ark. App. 466, 561 S.W.3d 744. Once the State has introduced evidence of nonpayment, the burden of going forward shifts to the defendant to offer some reasonable excuse for failing to pay. *Id.* It is the defendant’s obligation to justify his failure to pay, and this shifting of the burden of production provides an opportunity to explain the reason for nonpayment. *Sanders v. State*, 2012 Ark. App. 697. This shifting burden draws out the reason for nonpayment, and the defendant may not “sit back and rely totally upon the trial court to make inquiry into his excuse for nonpayment.” *Alexander*, 2018 Ark. App. 466, at 4, 561

S.W.3d at 746. Nor must the State negate every possible excuse for nonpayment—an impossible task—in its case-in-chief. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). Despite the shifting of the burden of production, the State shoulders the ultimate burden of proving that the defendant’s failure to pay was inexcusable, *Scroggins v. State*, 2012 Ark. App. 87, 389 S.W.3d 40, and the State may not stand on the fact of nonpayment alone. *Phillips v. State*, 101 Ark. App. 190, 272 S.W.3d 123 (2008).

In addition to the above considerations, there is a specific statute applicable to revocations that are based on failure to pay restitution. Arkansas Code Annotated section 5-4-205(f)(2) (Supp. 2021) provides that when restitution is ordered as a condition of a suspended imposition of sentence, the trial court may revoke “if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order.” In determining whether to revoke for a failure to pay restitution, the trial court shall consider the defendant’s employment status, earning ability, financial resources, the willfulness of the failure to pay, and any other special circumstances that may have a bearing on the defendant’s ability to pay. Ark. Code Ann. § 5-4-205(f)(3)(A)–(E). If the defendant asserts an inability to pay, then the State must carry its ultimate burden of demonstrating no good-faith effort guided by the factors in subsection (f)(3). *Jordan v. State*, 327 Ark. 117, 939 S.W.2d 255 (1997). Although the trial court is required to consider these factors, the statute does not require findings of fact on the factors. *Bohannon v. State*, 2014 Ark. App. 434, 439 S.W.3d 735.

Stiles argues that the trial court did not consider the five factors listed in section 5-4-205(f)(3) and that the State failed to provide evidence of each. Stiles contends that the only

evidence of his employment status and earning ability was that he was unable to obtain a job and was homeless and without transportation for several months before eventually obtaining a job. Stiles asserts that although he eventually did obtain employment, the State failed to offer any evidence or cross-examine him regarding the amount of income he received. Stiles further asserts that the State offered no evidence of his other sources of income or assets, or his expenses. Stiles claims that this case is very similar to *Hanna v. State*, 2009 Ark. App. 809, 372 S.W.3d 375, where we reversed a revocation, holding that the State failed to prove that Hanna's failure to pay restitution was based on anything other than his inability to pay. Stiles argues that because there was a lack of proof that his failure to pay was inexcusable, his revocation must be reversed.

We disagree and hold that the trial court's decision to revoke Stiles's suspended imposition of sentence based on his inexcusable failure to pay was not clearly against the preponderance of the evidence. Although Stiles relies on *Hanna, supra*, that case is readily distinguishable. In *Hanna*, the probationer had a disability, and the State admitted this fact in its case-in-chief. Hanna was unable to work, and his only source of income was a \$637 monthly SSI check from which he was responsible for paying an existing \$53 weekly child-support obligation. Hanna was ordered to pay \$163 in monthly restitution, and we reversed his revocation for failure to pay. In *Hanna*, we noted that the State can carry its burden of proof in many ways, including undermining the probationer's credibility, which is a matter for the trial court to judge. The *Hanna* court, however, stated that there was no credibility call to make because the State's proof confirmed Hanna's disability and, thus, his inability to pay.

Unlike *Hanna*, there was no evidence presented in this case demonstrating that Stiles had any disability that prevented him from working. The evidence showed that after his initial release on his suspensions, Stiles lived rent-free at his brother's house for a month and did not seek employment. Although Stiles testified that he was unemployed and was looking for work for the next several months after that, the trial court was not required to believe his testimony that he was unable to secure employment. *See, e.g., Stillwell v. State*, 2010 Ark. App. 546. Stiles admitted that about five months after being placed on the suspensions, he was employed at AMCORP for a period of four months before being arrested on an unrelated charge. Stiles never paid anything toward his financial obligation—even when he was employed—and he acknowledged in his testimony that he could have made some payment. On these facts, the trial court was entitled to assess Stiles's testimony and conclude that his nonpayment was inexcusable.

Stiles's remaining argument is that the trial court's revocation of his suspended sentences was based on an erroneous standard. Here, Stiles seizes on the trial court's comments during sentencing that the State "showed that he had the opportunity to pay something" but that "he didn't pay anything." Stiles contends that a showing that a defendant could have made *some* payment does not satisfy the State's burden of showing an inexcusable failure to pay or failure to make a good-faith effort.

We do not agree with Stiles's argument that the trial court's comments inferred an erroneous standard in revoking his suspensions. One of the factors that the trial court shall consider in determining whether to revoke for failure to pay restitution is the willfulness of the defendant's failure to pay. *See* Ark. Code Ann. § 5-4-205(f)(3)(D). The fact that Stiles

admitted he could pay something but failed to make any payments whatever bore on the willfulness of his failure to pay. *See generally Straub v. State*, 2019 Ark. App. 302, at 7, 577 S.W.3d 776, 780 (affirming revocation for failure to pay where trial court stated that appellant “had the ability, by part-time jobs or otherwise, to make some payments, \$10, \$15, \$25, whatever, but that has not been done”). Moreover, Ark. Code Ann. § 5-4-205(f)(2) permits the trial court to revoke for failure to pay restitution if the defendant fails to comply with the order and *has not made a good-faith effort to comply with the order*. We conclude that failing to make any payment at all while having the ability to do so demonstrates a failure to make a good-faith effort to comply with the order and is a relevant consideration in the trial court’s decision whether to revoke. Thus, we conclude that Stiles has demonstrated no error under this point.

For the reasons stated herein, we affirm the revocation of Stiles’s suspended impositions of sentence.

Affirmed.

HARRISON, C.J., and ABRAMSON, J., agree.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Peyton Hildebrand*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Adam Jackson*, Ass’t Att’y Gen., for appellee.