

Cite as 2023 Ark. App. 40  
**ARKANSAS COURT OF APPEALS**  
DIVISION II  
No. CR-22-325

SARAH HEATHMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 8, 2023

APPEAL FROM THE GRANT  
COUNTY CIRCUIT COURT  
[NO. 27CR-18-91]

HONORABLE CHRIS E WILLIAMS,  
JUDGE

AFFIRMED

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**BART F. VIRDEN, Judge**

The Grant County Circuit Court revoked appellant Sarah Heathman’s probation after finding that she violated several conditions of her probation. She was sentenced to twelve years’ imprisonment. Heathman argues that there was insufficient evidence that she willfully violated any of the conditions of her probation. We affirm.

I. *Background*

On December 20, 2018, Heathman pleaded guilty to possession of methamphetamine and possession of drug paraphernalia. She was placed on probation for a period of three years subject to the standard conditions, and she was also required to satisfy certain financial obligations and to attend substance-abuse counseling.

On September 26, 2019, the State filed a petition to revoke, alleging that Heathman had failed to report as directed on February 14, July 12, and September 5, 2019; that she had failed to provide proof of employment; that in February 2019 she had been arrested for drug offenses in Pulaski County and was subsequently placed on probation for a period of four years; that in September 2019 she had been arrested for criminal trespass and theft of property in Pulaski County; that she had tested positive for amphetamines in December 2018 and on six dates in 2019; that Heathman admitted living with, and continued to associate with, a known felon even after being counseled about the violation; that she had failed to satisfy her financial obligations; and that she had failed to participate in substance-abuse counseling in June and July 2019.<sup>1</sup>

At the revocation hearing, Randy Zimmerman, one of Heathman's probation officers, testified that he had authored two amended reports of Heathman's probation violations. Heathman raised no objection to the trial court's hearing evidence of violations that occurred subsequent to the September 2019 petition to revoke. Zimmerman testified to violations listed in his most recent amended report, and Heathman attempted to explain away the violations.

Zimmerman testified that, after Heathman failed to report on September 30, 2019, a home visit was conducted on October 3. He said that no one was at the residence and that instructions had been left for Heathman to report on October 8. Zimmerman stated that

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<sup>1</sup>It does not appear as though the State filed an amended petition to revoke to include additional violations.

Heathman was considered to have absconded from supervision from October 8 until she was arrested on August 19, 2021. Heathman testified that she had pneumonia and that two different probation officers had “told [her] not to come back in that office until [she] was not sick.” Heathman initially said that she reported by phone between 2019 and 2021 but later admitted that she had stopped calling in 2021 because she saw no point in reporting after she learned that her status was “absconded.” She said, “I know it was wrong. I should have went in[,] but I didn’t want to leave my mother-in-law alone.”

Heathman testified that she married Christopher Manes, her codefendant and a felon also on probation, in 2019. She claimed to have provided a marriage license to her probation officer, but Zimmerman said that she had not told anyone at the probation office that she was married to Manes.

As for her positive drug-test results, Heathman explained that she has an albuterol inhaler and that her physician had told her that she would test positive for amphetamines. Although Heathman claimed that she provided the prescription to her probation officer, Zimmerman testified that there was no such prescription on file. As far as substance-abuse counseling, Heathman asserted that she had been turned away on multiple occasions because there was no counseling that day. She testified that she simply stopped going after learning that her status was “absconded.” Zimmerman said that Heathman had been dropped from the program after she missed her September 24, 2019 appointment.

Heathman conceded that she had failed to satisfy her court-ordered financial obligations but said that she had informed one of her other probation officers early on that

she was physically unable to work. Zimmerman denied having any record of this report. Heathman elaborated by saying that she is “not allowed” to work because she has diabetes, asthma, bipolar schizophrenia with severe mood swings and blackouts, memory problems, deteriorating discs in her neck and back, a cyst on her back, and a spinal-nerve impingement. She said that she has been working with her doctor for a few years to get disability but that she could not afford to pay \$150 for a certified copy of her birth certificate. She also explained that she had to pay for her father-in-law’s funeral “and stuff.”

Zimmerman testified that Heathman had been arrested in Pulaski County for various offenses in February and September 2019. Heathman admitted that she had been placed on probation for drug offenses in Pulaski County. Zimmerman testified that Heathman had also failed to appear in the Lincoln County Circuit Court in January, June, and December 2019 and that a warrant had been issued for her arrest. According to Heathman, the charges in Lincoln County had been nolle prossed.

The trial court found that Heathman had violated her probation in several respects. In its ruling from the bench, the trial court remarked on Heathman’s failure to provide the court with medical records, a marriage license, and a prescription and the absence of any documentary proof in the record to support her testimony.

## II. *Standard of Review*

If a court finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of her probation, the court may revoke the probation at

any time prior to the expiration of the period of probation.<sup>2</sup> Ark. Code Ann. § 16-93-308(d) (Supp. 2021). The burden is on the State to prove a violation of a term or condition of probation by a preponderance of the evidence. *Scroggins v. State*, 2019 Ark. App. 346, 582 S.W.3d 853. On appeal, the trial court’s findings will be upheld unless they are clearly against the preponderance of the evidence. *Id.* Because a determination of the preponderance of the evidence turns heavily on questions of credibility and weight to be given to the testimony, the appellate courts defer to the trial court’s superior position in this regard. *Id.* Only one violation must be proved to support a revocation. *Id.*

### III. Discussion

As noted earlier in this opinion, Heathman did not object when the State introduced evidence of violations that had not been included in the September 2019 petition to revoke.<sup>3</sup>

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<sup>2</sup>Heathman’s three-year probationary period expired on December 20, 2021, and the trial court did not revoke her probation until January 26, 2022. After the State had filed its petition for revocation on September 26, 2019, a bench warrant was issued for her arrest on September 27. Heathman, however, absconded and was not arrested until August 19, 2021. Although this issue was not raised by the parties, we note that the trial court had jurisdiction to revoke Heathman’s probation because a warrant had been issued for her arrest before the probationary period expired. See Ark. Code Ann. § 16-93-308(f)(2) (Supp. 2021); *Carter v. State*, 350 Ark. 229, 85 S.W.3d 914 (2002). We further note that Heathman’s revocation hearing was not held within sixty days after her arrest pursuant to section 16-93-307(b)(2) (Repl. 2016); however, Heathman did not raise any objection below and thus waived the requirement. See, e.g., *Virgies v. State*, 2019 Ark. App. 353, 583 S.W.3d 403.

<sup>3</sup>See *Hill v. State*, 65 Ark. App. 131, 985 S.W.2d 342 (1999) (probationer’s due-process rights were violated when his probation was revoked on the basis of evidence of probation violations not enumerated in the petition to revoke); but see *Wilder v. State*, 2021 Ark. App. 131 (holding that the denial of any right, even a constitutional one, must be objected to at trial to be preserved for appeal).

Further, she does not raise any due-process argument on appeal. Rather, Heathman generally argues that Zimmerman had her as a probationer for only a short period of time after her arrest; that he had no direct knowledge of anything that transpired in connection with her alleged violations; and that he failed to obtain the correct information about her status and compliance from the other probation officers.

It is apparent from the record that the trial court did not believe any of Heathman's excuses for violating the conditions of her probation. Moreover, Heathman clearly absconded from supervision for nearly two years. Heathman admittedly failed to report to her probation officers as directed and stopped attending substance-abuse counseling after she had absconded in late 2019. Further, she repeatedly tested positive for a controlled substance for which she had no proof of a prescription. Under these circumstances, we cannot say that the trial court's revocation decision was clearly against the preponderance of the evidence.

Affirmed.

HARRISON, C.J., and THYER, J., agree.

*Gregory Crain*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Christopher R. Warthen*, Ass't Att'y Gen., for appellee.