

Cite as 2023 Ark. App. 79

ARKANSAS COURT OF APPEALS

DIVISIONS III & IV

No. CR-22-462

ERIC ROMAR STANLEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 15, 2023

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. 46CR-19-331]

HONORABLE CARLTON D.
JONES, JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

KENNETH S. HIXSON, Judge

Appellant Eric Romar Stanley appeals after the Miller County Circuit Court revoked his probation and sentenced him to serve seventy-two months' imprisonment in the Arkansas Department of Correction; assessed additional court costs and fees; and ordered him to pay all previously assessed fines, costs, and restitution upon his release.¹ Appellant's counsel has filed a no-merit brief and a motion to withdraw as counsel pursuant to Arkansas Supreme Court Rule 4-3 and *Anders v. California*, 386 U.S. 738 (1967), asserting that this appeal is wholly without merit. The motion is accompanied by a brief that is alleged to include a statement of the case containing all rulings adverse to the appellant made by the

¹This is a companion case to another criminal case, No. 46CR-20-421, in which appellant had also been initially placed on probation. The circuit court had held a combined revocation hearing on both cases but issued separate sentencing orders in each case revoking appellant's probation. Appellant filed separate appeals, and today, we hand down opinions in both appeals. See *Stanley v. State*, 2023 Ark. App. 88.

circuit court, the page number where each adverse ruling is located in the appellate record, and an argument section that consists of a list of all rulings adverse to the defendant made by the circuit court on all objections, motions, and requests made by either party with an explanation as to why each adverse ruling is not a meritorious ground for reversal. The clerk of this court mailed a copy of counsel's motion and no-merit brief to appellant's last-known address informing him of his right to file pro se points for reversal. The packet was mailed to appellant by certified mail, and a return receipt indicates that delivery was accepted. Appellant did not reply. Consequently, the attorney general did not file a brief in response. We grant counsel's motion to withdraw and affirm appellant's conviction.

I. Relevant Facts

In this case, No. 46CR-19-331, appellant was charged by information with aggravated assault on a family or household member, a Class D felony, in violation of Arkansas Code Annotated section 5-26-306 (Supp. 2021). Appellant subsequently entered a negotiated plea of guilty, and the circuit court filed a sentencing order on June 27, 2019, placing appellant on seventy-two months' probation and ordering appellant to pay court costs and fees. Although appellant subsequently violated the terms and conditions of his probation, the circuit court filed a sentencing order on February 5, 2021, reinstating his probation; assessing additional court costs and fees; and ordering him to pay all previously assessed fines, costs, and restitution upon his release.

Thereafter, the State filed another petition for revocation and two amended petitions for revocation. In the most recent amended petition filed on May 13, 2022, the State alleged that appellant had violated the terms and conditions of his probation as set forth in the

attached amended report of probation violation and recommendation to revoke that was executed by appellant's probation officer. The attached report alleged that appellant had violated the conditions of his probation in that he (1) "has committed an offense against the laws of this, or any other State, or the United States"; (2) "has failed to abstain from the use of alcoholic beverages or has manufactured, possessed, used, sold or distributed a controlled substance, narcotic drug or drug paraphernalia"; and (3) "has failed to pay Court Ordered financial obligations as specified." The probation officer more specifically alleged that appellant had committed the offense of criminal trespass on March 3, 2022; had committed the offenses of possession of a controlled substance (ecstasy pills) and criminal trespass on March 12, 2022; and had failed to pay his financial obligations as ordered. A revocation hearing was held on May 26, 2022.

Officer Teresa Atkins, appellant's current probation officer, testified that appellant had violated the terms of his probation in that he had failed to pay his court-ordered financial obligations and had violated Arkansas state law. Copies of the terms and conditions of appellant's probation signed by appellant were admitted into evidence. Officer Atkins explained that appellant owed a balance of \$2,450 in case No. 46CR-19-331 and \$2,175 in companion case No. 46CR-20-421. Certified copies of the ledgers from the circuit court clerk's office reflecting those amounts were also admitted into evidence. Officer Atkins further explained that appellant had been arrested for criminal trespass and possession of a controlled substance. She additionally offered that appellant had a positive drug test in January 2022.

Officer Daniel Thomas testified that he had been dispatched to an apartment complex on March 12, 2022, because appellant was causing a disturbance. Appellant had also been banned from the apartment complex after a previous incident that occurred on March 3, 2022. Officer Thomas testified that when he arrived at the scene, appellant was yelling in the hallway and banging on a door. After Officer Thomas placed appellant in handcuffs, appellant admitted that he had ecstasy pills in his right sock. Officer Thomas found two and a half pills weighing 0.08 grams in appellant's right sock.

Appellant testified on his own behalf. Appellant explained that he had been taking online college courses, working, and helping to take care of his grandmother before his most recent arrest. He admitted that he understood he had some court-ordered financial obligations. When asked why he had not been paying those obligations, he responded, "Actually I was getting around to it." He went on to explain that he did not have a good support system but was at least paying his supervision fees.

Appellant testified that on the day he was arrested, he had nowhere to go because he had been kicked out of his grandmother's home. He stated that because it was cold outside, he bought ecstasy pills and took them so he would not "freeze to death." Appellant explained that he went to his girlfriend's apartment to pick up some clothes—even though he had been previously banned from the apartment—and that his girlfriend called law enforcement after he arrived. He admitted that he had been "yelling back and forth" with his girlfriend and that he told law enforcement that he had "X pills" in his right sock. He further admitted that he had also been using ecstasy pills to self-medicate and treat his mental-health conditions, including schizophrenia, bipolar disorder, and "real strong

depression.” Appellant testified that he wanted to do anything he needed “to get this behind [him] so that [he could] get back on track and finish [his] schooling.”

After all the evidence had been presented, the circuit court orally stated that it was revoking appellant’s probation on the basis of the testimony of the State’s witnesses and appellant’s admission that he had violated Arkansas state law. The circuit court sentenced appellant to serve seventy-two months’ imprisonment; assessed additional court costs and fees; and ordered appellant to pay all previously assessed fines, costs, and restitution upon his release. This appeal followed.

II. *Sufficiency of the Evidence to Support Revocation*

Appellant’s counsel argues that the only adverse ruling was the revocation.² Therefore, we address whether the evidence was sufficient to support the revocation. A challenge to the sufficiency of the evidence may be raised for the first time in an appeal of a revocation in the absence of a motion for a directed verdict or motion to dismiss. *See Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). In a revocation proceeding, the circuit court must find by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her suspension or probation, and on appellate review, we do not reverse the circuit court’s decision unless it is clearly against the preponderance of the evidence. *Flemons v. State*, 2014 Ark. App. 131; Ark. Code Ann. § 16-93-308(d)

²Appellant’s counsel explains that there were no objections raised at the hearing, and that in regard to sentencing, even trial counsel did not make any sentencing request but instead stated that counsel did not “know what the solution on a case like this would be.” Counsel further discusses the questions appellant directly asked the circuit court after sentencing; however, counsel correctly explains that the court’s answers did not result in any adverse rulings.

(Supp. 2021). Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a probation or suspended-sentence revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002). Since the determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the circuit court’s superior position. *Id.* Furthermore, the State need only prove that the appellant committed one violation of the conditions in order to revoke appellant’s sentence. *Peals v. State*, 2015 Ark. App. 1, 453 S.W.3d 151.

Appellant’s counsel alleges that there would be no merit to an appeal from the revocation, and we agree. Here, the undisputed testimony was that appellant possessed a controlled substance—specifically, ecstasy pills—in violation of state law. Appellant even admitted that he was self-medicating and treating his mental-health issues with ecstasy pills. Therefore, we hold that there would be no merit to an appeal of the sufficiency of the evidence supporting the revocation.

III. *Conclusion*

Thus, from our review of the record and the brief presented, we find that counsel has complied with the requirements of Rule 4-3 and hold that any appeal would be wholly without merit. Accordingly, counsel’s motion to withdraw is granted, and appellant’s conviction is affirmed.

Affirmed; motion to withdraw granted.

ABRAMSON, KLAPPENBACH, and BROWN, JJ., agree.

HARRISON, C.J., and VIRDEN, J., dissent.

BRANDON J. HARRISON, Chief Judge, dissenting. I dissent from the decision to grant counsel's motion to withdraw for the same reasons I dissented today in *Stanley v. State*, 2023 Ark. App. 86, as this record presents the same nonfrivolous illegal-sentence issues.

VIRDEN, J., joins.

Phillip A. McGough, P.A., by: *Phillip A. McGough*, for appellant.

One brief only.