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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-534

MARIO PALMER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 29, 2023

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT
[NO. 02CR-20-230]

HONORABLE ROBERT B.
GIBSON III, JUDGE

AFFIRMED; REMANDED TO
CORRECT SENTENCING
ORDER

KENNETH S. HIXSON, Judge

This is a revocation case. On September 9, 2021, the trial court entered a sentencing order placing appellant Mario Palmer on a three-year suspended imposition of sentence pursuant to Palmer’s plea of nolo contendere to aggravated assault. The conditions of Palmer’s suspension required him to not “purchase, own, possess, or control any deadly weapons or firearms.”

On March 15, 2022, the State filed a petition to revoke Palmer’s suspended sentence, alleging that he violated his conditions by possessing a firearm on February 24, 2022. After a hearing held on May 2, 2022, the trial court found that Palmer violated the conditions of his suspension. On May 4, 2022, the trial court entered an order revoking Palmer’s suspended sentence and sentencing him as a habitual offender to ten years in prison.

Palmer now appeals from the revocation and resulting sentence. Palmer's sole argument on appeal is that there was insufficient evidence to support the revocation. 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.

Officer Ross Fuller testified at the revocation hearing. On February 24, 2022, Officer Fuller and other law enforcement officials went to the residence at 109 Ashley Road 130 in Hamburg to conduct a home visit on Palmer.¹ According to Officer Fuller, this was the address Palmer had provided to the probation and parole authorities at the time of his release.²

Officer Fuller stated that after the officers arrived at the residence, Kathy Tran answered the door. Ms. Tran confirmed that Palmer lived there but stated that he was not currently at the residence. Ms. Tran told Officer Fuller that Palmer stayed in the first bedroom down the hallway on the right. The officers entered that bedroom and saw a firearm in plain view leaning against the closet. The officers, however, did not find any of Palmer's clothing or other personal

¹Palmer had a search waiver on file.

²Although it is not clear from the record, apparently Palmer had been incarcerated on an unrelated charge and was paroled just a few weeks before the home visit.

belongings in that bedroom. Officer Fuller inquired about why Palmer's belongings were not in that room, and Ms. Tran again stated that Palmer stayed in that bedroom.

Officer Fuller then asked Ms. Tran if there were any other firearms inside the residence, and she stated that there might be one more in the bedroom at the end of the hallway. The officers went into that bedroom and saw a firearm in plain view leaning against a dresser. Officer Fuller stated that they looked inside the dresser and found Palmer's "search-waiver sheet and his ADC paperwork." The officers also found five more firearms in the closet of that bedroom, for a total of seven firearms in the residence.³ Ms. Tran told Officer Fuller that she did not know that all of those firearms were inside the residence. Officer Fuller stated that although Palmer was not present during the search of the residence, he was later arrested and charged with being a felon in possession of a firearm.

Terri Rogers testified that she is a parole and probation agent for Arkansas Community Corrections and has access to Palmer's file. Ms. Rogers stated that it was Palmer's responsibility to provide his address and that he had "paroled out" to 109 Ashley Road 130 in Hamburg. Ms. Rogers stated that it was Palmer's duty to make sure her office had his correct address. Ms. Rogers stated further that Palmer could get in trouble if he was not living at the address he had provided.⁴

Officer Tad Huntsman was the last State's witness to testify. Officer Huntsman assisted in the home visit and stated that the seven firearms found at the residence were "very, very

³All of the firearms were long guns—rifles and shotguns.

⁴We observe that the conditions of Palmer's suspended sentence did not contain any requirements related to his address, and the State's petition to revoke was premised solely on its allegation that Palmer possessed a firearm.

accessible.” On cross-examination, Officer Huntsman acknowledged that none of Palmer’s personal belongings were found during the home visit other than his paperwork. Officer Huntsman stated that he did not recall seeing any of Palmer’s clothing and that he did not remember looking for other personal items.

Kathy Tran was the only witness to testify for the defense. Ms. Tran and Palmer have a one-year-old daughter together. Ms. Tran testified that the residence at 109 Ashley Road 130 is her home and that this was the address Palmer provided as his address when he was paroled. Ms. Tran stated that during the initial parole visit after Palmer was paroled, his parole officer informed her that Palmer’s designated quarters were subject to being searched and that she told the parole officer that Palmer’s bedroom was the first bedroom on the right. Ms. Tran also acknowledged that, during the February 24, 2022 home visit, she told the officers that Palmer lived in the house and was staying in the first bedroom on the right.

Ms. Tran, however, testified that Palmer had never been in her house. Ms. Tran stated that when Palmer was paroled about three weeks before the home visit, they had a disagreement about how to raise their daughter, and they “made a judgment call” that he would not live in her house but would instead live with his cousin at an apartment in Crossett. Ms. Tran stated that the first bedroom on the right, which she had told the officers was Palmer’s room, is actually their daughter’s room. Ms. Tran stated that all of the guns found in the house belong to her or her ex-husband and that Palmer never had access to the guns. With respect to Palmer’s paperwork, Ms. Tran stated that Palmer had asked her to keep up with it so she put it in a dresser in her house. Ms. Tran maintained that Palmer “didn’t even know where the paperwork was” and that he “trusted [her] to keep up with it.”

Based on this evidence, the trial court found that Palmer violated the condition of his suspended sentence that he not purchase, own, possess, or control any deadly weapons or firearms. The trial court found Ms. Tran's testimony about Palmer never being in her house to be "wholly unbelievable." The trial court noted that Palmer had provided Ms. Tran's address as his address to the probation and parole authorities and stated, "[Y]ou can't claim something is your house and then claim it's not your house when all of a sudden there's contraband in it."

On appeal from the revocation, Palmer argues that there was insufficient evidence that he violated a condition of his suspended sentence. Palmer directs us to Ms. Tran's testimony that, once Palmer was paroled, he had never been in her house and that all the firearms belong to her or her ex-husband. Palmer further asserts that, other than a few of his papers, there was no sign that he lived or stayed at the house. Palmer argues that, under these circumstances, the trial court's finding that he possessed or controlled a firearm in violation of his probation was clearly against the preponderance of the evidence.

The supreme court has consistently held that possession of contraband may be proved by constructive possession, which is the control or right to control the contraband; thus, it is not necessary for the State to prove actual possession of the contraband. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004). To prove constructive possession, the State must establish that the defendant exercised care, control, and management over the contraband. *Id.* Constructive possession may be implied when the contraband is in the joint control of the defendant and another person. *Burgess v. State*, 2021 Ark. App. 54. Joint occupancy alone, however, is not sufficient to establish possession or joint possession; there must be some additional factor linking the accused to the contraband. *Id.* A defendant's control over, and knowledge of, the

contraband can be inferred from the circumstances, which includes whether the contraband was found in plain view. *Id.*

Applying these principles, we conclude that the trial court's finding that Palmer constructively possessed a firearm was not clearly erroneous. The undisputed evidence showed that, when Palmer was paroled just a few weeks before the officers' home visit, he provided Ms. Tran's address to the parole office as his address. Ms. Tran confirmed this fact in her testimony, and she testified that on the initial parole visit to her house, she told the parole officer that Palmer would be living there and staying in the first bedroom on the right. When the officers conducted the home visit three weeks later, Ms. Tran reiterated to the officers that Palmer lived there and was staying in the first bedroom on the right.⁵ During the home visit, the officers found a firearm in plain view in the bedroom that Ms. Tran had identified as Palmer's bedroom. The officers found another firearm leaning against a dresser in plain view in another bedroom. That dresser contained Palmer's search-waiver sheet and his ADC paperwork. More firearms were found in a bedroom closet, and during the home visit, Ms. Tran told the officers that she was unaware of all the firearms found in her house.

The State's burden of proof in a revocation hearing—a preponderance of the evidence—is less than that required to convict at a criminal trial. *Jones, supra*. Thus, evidence that is insufficient for a criminal conviction may be sufficient for revocation of probation or a suspended sentence. *Id.* In light of this lesser burden and the proof presented, and deferring to

⁵Although Ms. Tran testified that Palmer had never been in her house, the trial court found this testimony “wholly unbelievable.” We defer to the trial court's credibility determinations. *Stiles v. State*, 2022 Ark. App. 348.

the trial court's credibility determinations, we hold that the trial court's decision to revoke Palmer's suspended sentence based on its finding that Palmer possessed a firearm was not clearly against the preponderance of the evidence. Accordingly, we affirm the revocation.

Finally, we remand the case to the trial court for the limited purpose of entering an amended sentencing order that corrects a clerical error. Although the order being appealed states that Palmer entered a negotiated plea of guilty, Palmer was found guilty by the trial court at the revocation hearing and was sentenced by the court. Therefore, we remand for the trial court to correct the sentencing order. See *Walls v. State*, 2023 Ark. App. 49, 659 S.W.3d 741; *Newton v. State*, 2016 Ark. App. 1.

Affirmed; remanded to correct sentencing order.

KLAPPENBACH and WOOD, JJ., agree.

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

Leslie Rutledge, Att'y Gen., by: David L. Eanes, Jr., Ass't Att'y Gen., for appellee.