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ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-311

RAYTERIUS HOWARD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 12, 2023

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NOS. 18CR-20-67, 18CR-20-837]

HONORABLE DAN RITCHEY, JUDGE

AFFIRMED

WENDY SCHOLTENS WOOD, Judge

Rayterius Howard appeals the Crittenden County Circuit Court’s sentencing order revoking his suspended imposition of sentence in two cases and sentencing him to consecutive terms of six years’ imprisonment in each one. On appeal, Howard argues that the evidence was insufficient to support revocation. *We affirm.*

Howard pled guilty in 2020 to aggravated assault and was sentenced as a first offender to twenty-four months’ probation and ordered to pay fines, fees, and costs in installments. The circuit court subsequently revoked Howard’s probation and his first-offender status. It suspended imposition of sentence for sixty months and ordered him to pay the outstanding balance on the previously imposed fines, fees, and costs in monthly installments of \$25 beginning July 15, 2021. In a separate case in 2021, Howard pled guilty to possession of a

firearm. Imposition of sentence in that case was suspended for thirty-six months, and Howard was ordered to pay fines, fees, and costs in monthly installments of \$50 beginning May 22, 2021. The conditions of his suspensions in both cases required Howard to pay his fines, fees, and costs as directed; obey all federal and state laws; and not possess, use, or have in his control any firearm.

On July 13, 2021, and on January 31, 2022, the State filed petitions to revoke Howard's suspended sentences in both cases. The petitions alleged, in pertinent part, that Howard had violated several conditions of his suspended sentences, including that he pay fines, fees, and costs as directed and that he live a law-abiding life and not violate any state law. Regarding the latter, the petitions alleged that on June 9, 2021, Howard committed the offenses of possession of a firearm by a felon and theft by receiving; and on December 29, 2021, he committed the felony offense of possession of a firearm by a felon.

At Howard's revocation hearing on February 8, 2022, the State introduced ledgers from the court clerk's office showing that Howard had been ordered in 2020 and 2021 to pay fines, fees, and costs in monthly installments but had paid nothing in either case and had not communicated with the court about payments. Howard stipulated to those facts. The State then called four West Memphis police officers who testified that Howard had been a joint occupant in cars where guns were found in the spring of 2021 and on June 9, September 9, and December 29, 2021.

Regarding the traffic stop on December 29, 2021, the evidence showed that Howard was one of four occupants in a vehicle. He was in the back seat on the right passenger side.

The driver of the car consented to a search of the vehicle, which belonged to his mother. Officers found a Glock 34 firearm with an extended magazine containing twenty-one rounds of ammunition concealed in the seat cushion where Howard had been sitting. Other evidence showed that the weapon had been stolen from an officer's personal vehicle at the end of 2020 and was somewhat unique in that it had a ported barrel, which the testimony indicated is typically used by SWAT-type police units or competition shooters. The gun also had a nickel-plated slide lock.

There was testimony that Howard falsely identified himself during the December 29 stop, but another officer recognized him from previous encounters. Officers subsequently viewed images and videos that had been published on Howard's social-media accounts between one to four months before the revocation hearing. The images and videos depicted Howard holding Glock firearms with high-capacity magazines in them, including a Glock 34 with the same appearance and features—a ported barrel and nickel-plated slide lock—as the weapon officers had recovered during the December 29 traffic stop.

Howard, an aspiring rapper, testified on his own behalf. He said he lived “[o]n the move” and “wherever we work.” He repeatedly answered that he just “make[s] it work” when he was asked how he was able to buy food and where he lived. When asked if he had a job, he initially stated that he had just started with a lawn service, but he later stated that he had only done some work helping a person with “snow and stuff” in his yard for a couple of hours a day. He testified he had \$275 in his PayPal account from recent yard work. He said he did not draw any governmental aid, and when asked if he had the ability to pay his

monthly installment for fines, fees, and costs, he answered no without elaborating. He said he had no income, but he had worked at some point for a month in Earle, Arkansas, as a porter at “T.A.,” and that is where he earned \$500 to pay for his first music video.

Howard denied possessing the firearms found during the traffic stops. He said the firearms that he was seen with on social media were not real and that he was using them to make music videos. One video shown in court depicted Howard holding Glock firearms and numerous hundred-dollar bills.

At the conclusion of the hearing, the circuit court orally revoked Howard’s suspended sentences, finding that he had the ability to earn money and to pay his fines and costs as directed and that he had failed to do so. The court also found Howard’s testimony about the firearms was not credible and that he had possessed or exercised control over a firearm in violation of the conditions of his suspended sentences. The court specifically found, on the basis of the testimony and its own observation of the evidence, including the photos and videos depicting Howard with guns, that one of the guns depicted in the photos and videos was the same gun police recovered in the December 29 traffic stop. The circuit court entered its sentencing order revoking Howard’s suspended sentences on February 8, 2022, and this appeal followed.

Howard challenges the sufficiency of the evidence supporting the revocations, arguing that the State failed to prove that he (1) inexcusably failed to pay his fines, fees, and costs as directed and (2) possessed a firearm. To revoke a suspended sentence, the circuit court must find by a preponderance of the evidence that the defendant has inexcusably failed to comply

with a condition of the suspension. Ark. Code Ann. § 16-93-308(d) (Supp. 2021). The State has the burden of proving the defendant violated a condition of his suspended sentence; however, it must establish only one violation to sustain the revocation. *Sivils v. State*, 2021 Ark. App. 198, at 3, 623 S.W.3d 138, 140. A preponderance of the evidence is convincing evidence that is more probably accurate and true when weighed against the evidence opposed to it. *Id.*, 623 S.W.3d at 140. This court will not reverse a circuit court’s decision to revoke a suspended sentence unless the decision is clearly against the preponderance of the evidence. *Walls v. State*, 2023 Ark. App. 49, at 4, 659 S.W.3d 741, 743. Decisions about the preponderance of evidence turn on the credibility and weight of the testimony and evidence, and these are matters on which we defer to the circuit court because it is in a superior position to view the testimony and evidence firsthand. *Id.*, 659 S.W.3d at 744.

Howard first argues that the evidence is insufficient to support his revocation in both cases because the State did not show that his failure to pay was willful. It is the State’s burden to prove that the failure to pay was inexcusable. *Alexander v. State*, 2018 Ark. App. 466, at 3, 561 S.W.3d 744, 746. 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. *Vail v. State*, 2014 Ark. App. 407, at 3, 438 S.W.3d 286, 288. It is then the defendant’s obligation to justify the failure to pay by providing evidence of a reasonable excuse for the nonpayment. *Id.*, 438 S.W.3d at 288. The defendant may not “sit back and rely totally upon the [circuit] court to make inquiry into his excuse for nonpayment.” *Alexander*, 2018 Ark. App. 466, at 4, 561 S.W.3d at 746. The State is not required to negate every possible excuse

for nonpayment in its case-in-chief. *Reese v. State*, 26 Ark. App. 42, 44, 759 S.W.2d 576, 577 (1988). While the ultimate burden of proving inexcusable nonpayment remains on the State, if the defendant fails to demonstrate a reasonable explanation for his failure to pay, then it is difficult to find clear error in a circuit court's finding of inexcusable nonpayment. *Springs v. State*, 2017 Ark. App. 364, at 4, 525 S.W.3d 490, 493.

As he did below, Howard concedes that he failed to pay his fines, fees, and costs as directed and that the burden of going forward shifted to him, requiring that he demonstrate a reasonable excuse for his failure to pay. He argues that he satisfied his burden by justifying his nonpayment with a reasonable excuse that he had no job and no money. He further contends that the State did not carry its ultimate burden of proof because “[t]here was no testimony as to his ability to earn money, or otherwise” and “no evidence of his ability to get work or pay.”

The failure to work and obtain money, standing alone, is insufficient to satisfy the defendant's burden of production on the issue of reasonable excuse. In *Brown v. State*, 10 Ark. App. 387, 664 S.W.2d 507 (1984), this court held that the burden of going forward requires more of a defendant than simply stating he did not work and earn money regularly during a period of suspension. In *Brown*, the appellant was ordered to pay monthly installments of \$50 beginning December 1, 1982, as a condition of his suspended imposition of sentence. *Id.* at 388, 664 S.W.2d at 508. He made no payments. At his revocation hearing, he testified that he had worked for a few months before the suspension period began but did not work after it began. He said that he planned to go to work for his mother, but he

did not state when and for what wages, and he offered no evidence to explain why he was not working, what job contacts he had made, or what his living expenses were. *Id.* at 388, 664 S.W.2d at 508. This court affirmed the circuit court’s finding that the appellant in *Brown* had inexcusably failed to pay, stating he could not “sit back and rely totally upon the [circuit] court to make inquiry into his excuse for nonpayment.” *Id.* at 389, 664 S.W.2d at 508. This court held that it was incumbent on the appellant to go forward with whatever evidence he had to establish excusable reasons why he did not pay the fine or restitution. *Id.* at 389, 664 S.W.2d at 508.

In contrast, this court has found excusable circumstances for nonpayment when an appellant has demonstrated an effort to comply with his payment obligation and a hindrance to doing so. In *Baldrige v. State*, 31 Ark. App. 114, 117, 118, 789 S.W.2d 735, 737, 738 (1990), this court reversed a finding of failure to pay where the appellant was a young adult whose testimony showed he was the primary provider for his ill mother and younger siblings, he had no car, he worked at any and all types of manual labor that he could find, and he gave his mother every penny to help meet family expenses. *Id.* at 117, 789 S.W.2d at 738; *see also Hanna v. State*, 2009 Ark. App. 809, 372 S.W.3d 375 (reversing revocation of probation for failure to pay restitution where it was undisputed the appellant was disabled, he testified that he was unable to work, his only source of income was SSI disability benefits of \$637 a month, his monthly court-ordered payment was \$400, and he had been able to make only one payment with the help of his wife).

The instant case is more similar to *Brown* than it is to *Baldrige* and *Hanna*. The record shows that Howard could work and earn money. He earned \$500 to pay for a music video, a few days before the hearing he worked for a couple of hours a day doing yard work, and he had \$275 in his PayPal account the day before the hearing. Nevertheless, Howard made no payments on his monthly obligation, and he offered no testimony about why he had not regularly worked, why he had not made a single payment on his monthly installments, what his monthly living expenses were, and how he was meeting them. This evidence supports the circuit court's finding that Howard failed to demonstrate a reasonable excuse for his failure to pay as directed. Accordingly, we affirm the circuit court's finding that Howard violated a condition of his suspended sentences by inexcusably failing to pay his financial obligations as directed. Because sufficient evidence of a single violation is all that is necessary to affirm, we need not address the remaining violation found by the circuit court.

Affirmed.

KLAPPENBACH and HIXSON, JJ., agree.

Lisa-Marie Norris, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jason Michael Johnson*, Ass't Att'y Gen., for appellee.