

Cite as 2023 Ark. App. 412
ARKANSAS COURT OF APPEALS
DIVISION II
No. CR-22-765

ROY UGARTECHEA

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: September 27, 2023

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-17-538]

HONORABLE RALPH C. OHM,
JUDGE

AFFIRMED

CINDY GRACE THYER, Judge

Roy Ugartechea appeals a Garland County Circuit Court’s sentencing order revoking his probation and sentencing him to ten years’ imprisonment.¹ On appeal, he claims that there was insufficient evidence that he willfully violated the terms and conditions of his probation. We affirm.

To revoke probation, the circuit court must find by a preponderance of the evidence that the defendant has inexcusably violated a condition of the probation or suspension. *Springs v. State*, 2017 Ark. App. 364, 525 S.W.3d 490. The State’s burden of proof in a

¹This is a companion case to another criminal case, No. 26CR-18-318, in which Ugartechea 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 Ugartechea’s probation. Ugartechea has filed separate appeals, and today, we hand down opinions in both appeals. See *Ugartechea v. State*, 2023 Ark. App. 413.

revocation proceeding is lower than that required to convict in a criminal trial, and evidence that is insufficient for a conviction thus may be sufficient for a revocation. *Id.* Furthermore, the State does not have to prove every allegation in its petition, and proof of only one violation is sufficient to sustain a revocation. *Mathis v. State*, 2021 Ark. App. 49, 616 S.W.3d 274.

On appellate review, we uphold the circuit court's findings unless they are clearly against the preponderance of the evidence. *Id.* Because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the circuit court's superior position. *Burgess v. State*, 2021 Ark. App. 54.

Ugartechea pled guilty in January 2019 to one count of nonsupport and was sentenced to ten years' probation, subject to certain terms and conditions. As part of the terms and conditions of his probation, he was prohibited from committing a criminal offense punishable by imprisonment and from using, selling, distributing, or possessing any controlled substance. He was further ordered to report to a supervising officer; to pay a \$500 fine; to pay restitution in the amount of \$13,993; and to pay other court costs and fees.

In March 2022, the State filed a petition to revoke alleging that Ugartechea had violated the terms and conditions of his probation. The State alleged he that used controlled substances, failed to report to his probation officer, and failed to make payments on his fines, fees, and restitution. The State subsequently amended its petition in May 2022, to include

an allegation that he had violated the condition prohibiting him from committing a criminal offense.

The circuit court held a hearing on the State's petition in August 2022. At the hearing, the State called two witnesses. The State's first witness was Ugartechea's probation officer, Officer Keyona Wesley, who testified that he had not reported to her since August 17, 2020, and that he had failed to report for his substance abuse assessment. She further testified that Ugartechea had not paid anything toward his monetary obligations. Ugartechea had informed her that he was working for his cousin, but she had been unable to verify his employment. She admitted she was unaware whether he had income sufficient to satisfy his financial obligations but stated that he had never claimed that he could not afford his financial obligations.

Finally, Officer Wesley testified that Ugartechea had been charged in May of 2022 with possession of a controlled substance; possession of drug paraphernalia; and possession of a controlled substance. At the conclusion of Officer Wesley's testimony, the State introduced into evidence, without objection, a certified copy of the Garland County District Court docket, which indicated Ugartechea had pled no contest on July 19, 2022, to possession of drug paraphernalia and possession of a controlled substance (Schedule VI)—both Class A misdemeanors.

The State then presented the testimony of Ronetta Burroughs, the Office Administrator for the Garland County Sheriff's office. She testified that Ugartechea had failed to make any payments toward his financial obligations since their imposition in

February 2019. She further stated that her records did not reflect any contact with Ugartechea regarding his inability to pay his monetary obligations.

After the State presented its evidence, Mr. Ugartechea testified in his own defense. When asked, he admitted to pleading no contest to the misdemeanor drug offenses in district court and that he knew that his plea could potentially result in revocation of his probation. As for his failure to report, he explained that his uncle had died, he had moved, and he had been homeless at times; however, he admitted that he knew he was required to report but had not done so. As for his ability to pay his monetary obligations, he explained that, for the most part, he had been unable to pay but admitted there had been times where he could have made payments, but he did not do so. He indicated that he did not contact the probation office or the sheriff's office about his missed payments because he was afraid he would be arrested.

After hearing the evidence and the arguments of counsel, the circuit court revoked Ugartechea's probation on all violations alleged in the petition. The court sentenced him to ten years in the Arkansas Department of Correction and converted his restitution into a civil judgment. Thereafter, Ugartechea filed a timely notice of appeal, challenging the sufficiency of the evidence to support the revocation.

Here, Ugartechea argues that there was insufficient evidence that his failures to pay and report were willful. However, we need not address the merits of his argument. When multiple offenses are alleged as justification for revocation of probation, the circuit court's finding that revocation is justified must be affirmed if the evidence is sufficient to establish

that the appellant committed any one of the offenses. *Williams v. State*, 2015 Ark. App. 245, 459 S.W.3d 814. Moreover, when a circuit court bases its decision on multiple, independent grounds, and an appellant challenges only one of those grounds on appeal, we can affirm without addressing the merits of the argument. *Id.*

Here, the State alleged multiple offenses in its revocation petition, including Ugartechea's convictions for committing a drug offense, his possession of controlled substances, his failure to pay, and his failure to report. The circuit court revoked his probation based on Ugartechea's violation of all four provisions, including his May 2022 no contest plea on two drug charges. In his brief, Ugartechea admits that evidence of his convictions was introduced at the revocation hearing and argues only that he had reasonable excuses for failing to comply with the reporting and payment conditions. He does not appear to challenge the other independent bases for the circuit court's revocation decision—that is, his admitted criminal conduct and his possession of controlled substances; therefore, we should affirm. See *Breeden v. State*, 2013 Ark. App. 522 (affirming without addressing appellant's argument that he excusably failed to refrain from using drugs when appellant did not address the circuit court's alternative finding that he failed to report to his probation officer).

Even if this court were to find that he properly challenged the other violations in his brief, there was still sufficient evidence to support the revocation on those bases as he admitted to pleading no contest to possession of controlled substance charges and that he knew those pleas could result in his revocation.

Affirmed.

BARRETT and WOOD, JJ., agree.

Robert M. “Robby” Golden, for appellant.

Tim Griffin, Att’y Gen., by: *A. Evangeline Bacon*, Ass’t Att’y Gen., for appellee.