

Cite as 2024 Ark. App. 108  
**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CR-23-55

RICKIE NASH

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 14, 2024

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT, WESTERN  
DISTRICT

[NOS. 16JCR-19-354, 16JCR-19-1540]

HONORABLE CHRIS THYER,  
JUDGE

AFFIRMED

---

**KENNETH S. HIXSON, Judge**

This is a revocation case. On May 22, 2019, the trial court entered a sentencing order placing appellant Rickie Nash on five years' probation pursuant to Nash's negotiated plea of guilty to second-degree forgery. The conditions of Nash's probation required that he not commit a criminal offense punishable by imprisonment.

On April 6, 2022, the State filed a petition to revoke Nash's probation, alleging that he had violated the conditions of his probation by committing various drug-related offenses on March 17, 2022. On August 18, 2022, the State filed a supplemental revocation petition alleging that Nash possessed methamphetamine and drug paraphernalia on July 27, 2022.

After a revocation hearing held on October 6, 2022, the trial court found that Nash had violated the conditions of his probation. On the same day, the trial court entered an order revoking Nash's probation and sentencing him to ten years in prison.

Nash now appeals from the revocation and resulting sentence. Nash'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. 2023), 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 need prove only one violation to sustain the revocation. *Young v. State*, 2023 Ark. App. 416. 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. *Id.* Because the burdens are different, evidence that is insufficient for a criminal conviction may be sufficient for a revocation. *Bradley v. State*, 347 Ark. 518, 65 S.W.3d 874 (2002).

Officer Tanner Huff of the Jonesboro Police Department testified at the revocation hearing. Officer Huff testified that on March 17, 2022, while he was on patrol, he saw a hand-to-hand exchange between Nash and another man that was consistent with a narcotics sale outside of Nash's residence on Creath Avenue. Nash got on his bicycle and began traveling down Creath Avenue when Officer Huff stopped him.

Officer Huff knew that Nash was on probation from previous encounters with him, and he conducted a warrantless probation search of Nash's person. During the search,

Officer Huff found four MDMA (ecstasy) pills in Nash's pants pocket and 78 grams of edible marijuana gummies in an M&M's bag in Nash's backpack.

Officer Huff then took Nash back to Nash's residence and conducted a search of the residence. Officer Huff stated that when he searched Nash's bedroom, he found a large plastic bag containing 1693 grams of edible marijuana gummies, sets of scales, marijuana bongs, and pipes. Officer Huff could tell that the marijuana was not purchased with a medical-marijuana card or from a licensed dispensary because the bag containing the marijuana did not have a label identifying its contents or the patient's name. Officer Huff also stated that there is a city park within five hundred feet of Nash's residence. Officer Huff arrested Nash and charged him with possession of MDMA, possession of marijuana with the purpose to deliver, possession of drug paraphernalia, and maintaining a drug premises in proximity to a city park.

Officer Jacob Lowry of the Jonesboro Police Department also testified at the revocation hearing. Officer Lowry testified that he was informed that Nash lived at 814 Creath Avenue and that Nash was on probation with a search waiver on file. Officer Lowry stated that, on July 27, 2022, he went to that address to conduct a welfare check on a female who was allegedly living there and also to conduct a probation search.

When Officer Lowry arrived at the residence, he knocked on the door, and Nash opened the door. Officer Lowry stated that he entered the residence and checked on the female who was there, and she told him that she was fine. Officer Lowry then executed a probation search of the residence.

Officer Lowry testified that during the search, he found a methamphetamine pipe with residue between two couch cushions in the living room. Officer Lowry asked Nash what was in the pipe, and Nash stated it was methamphetamine. Also in the living room, Officer Lowry found a “day-of-the-week” pill dispenser with a white crystal substance that tested positive for methamphetamine. Officer Lowry stated that he searched Nash’s bedroom and found two bags of marijuana totaling 18.3 grams and four sets of digital scales with white residue. Officer Lowry arrested Nash and charged him with possession of methamphetamine and possession of drug paraphernalia.

Rickie Nash testified on his own behalf. With respect to his March 17 encounter with Officer Huff, Nash admitted that the edible marijuana gummies in the M&M’s bag that was seized from his backpack belonged to him and that he does not have a prescription for medical marijuana. Nash stated that he uses marijuana on a daily basis. With respect to his July 27 encounter with Officer Lowry, Nash stated that the apartment Officer Lowry searched that day belonged to Nash’s girlfriend and that he lived next door to her. Nash admitted that he spent about twelve hours a day at his girlfriend’s apartment and that he knew she used drugs. However, Nash claimed that none of the drugs that were found in the apartment that day belonged to him. Nash stated that he did not have a bedroom in his girlfriend’s apartment and that the marijuana was found in a guest bedroom where numerous people had stayed.

Based on the testimony presented at the revocation hearing, the trial court found that Nash had violated the condition of his probation that he not commit a criminal offense punishable by imprisonment, and the court revoked Nash's probation. Nash now appeals.

On appeal, Nash argues that there was insufficient evidence to support the trial court's finding that he had violated a condition of his probation. Nash's argument focuses on the July 27, 2022, encounter with Officer Lowry, and he contends that although Officer Lowry found illegal drugs and drug paraphernalia in the common areas of Nash's girlfriend's apartment, Nash was not found to be in actual possession of any contraband, and the State failed to prove that he constructively possessed any of the items. During the search, Nash jointly occupied the premises with his girlfriend, and he acknowledges that constructive possession may be inferred when the contraband is in the joint control of the accused and another. *Franklin v. State*, 60 Ark. App. 198, 962 S.W.2d 370 (1998). However, joint occupancy alone is not sufficient to establish possession or joint possession, and in such cases the State must prove two additional elements: (1) that the accused exercised care, control, and management over the contraband and (2) that the accused knew the matter possessed was contraband. *Id.* Nash argues that the State did not prove either prong and that, as such, the State failed to prove that he was in possession of contraband.

We conclude that the State sufficiently proved that Nash violated his probation by committing the additional criminal offenses of possessing controlled substances. While Nash argues that he did not constructively possess any of the contraband seized by Officer Lowry on July 27, 2022, he completely ignores the contraband that was seized from his

person by Officer Huff on March 17, 2022. Officer Huff testified that on that day, he found four MDMA (ecstasy) pills in Nash's pants pocket and 78 grams of edible marijuana gummies in an M&M's bag in the backpack Nash was carrying. Nash admitted in his testimony that the edible marijuana gummies belonged to him, that he is a daily marijuana user, and that he did not have a prescription for medical marijuana. Nash's actual possession of MDMA and marijuana was sufficient evidence that Nash had violated his probation.

On the basis of the evidence as set forth above, we hold that the trial court's decision to revoke Nash's probation was not clearly against the preponderance of the evidence. Accordingly, we affirm the revocation.

Affirmed.

HARRISON, C.J., and ABRAMSON, J., agree.

*Terry Goodwin Jones*, for appellant.

*Tim Griffin*, Att'y Gen., by: *David L. Eanes, Jr.*, Ass't Att'y Gen., for appellee.