

Cite as 2024 Ark. App. 184  
**ARKANSAS COURT OF APPEALS**  
DIVISION II  
No. CR-23-47

RYAN COCKRELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 13, 2024

APPEAL FROM THE FAULKNER  
COUNTY CIRCUIT COURT  
[NO. 23CR-20-1117]

HONORABLE CHARLES E.  
CLAWSON III, JUDGE

AFFIRMED

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**ROBERT J. GLADWIN, Judge**

This appeal of Ryan Cockrell’s probation revocation and the resulting November 1, 2022 sentencing order by which he was sentenced to one year in the Faulkner County Detention Center is back before us after we remanded to settle the record on October 4, 2023. See *Cockrell v. State*, 2023 Ark. App. 430. Cockrell challenges the sufficiency of the evidence supporting the revocation of his probation on the grounds that he inexcusably failed to make court-ordered payments and that he failed to report to his probation officer. We affirm.

*I. Facts and Procedural History*

On April 5, 2021, Cockrell pleaded guilty in the Faulkner County Circuit Court to the misdemeanor offenses of possession of a controlled substance and possession of drug paraphernalia. He was placed on supervised probation for a period of twelve months subject

to certain terms and conditions, including that he not violate any local, state, or federal laws; that he pay a total of \$1,065 in costs, fees, and fines (at a rate of \$50 a month, to be paid to the Faulkner County Sheriff's Office); that he abstain from illegal drug use and submit to drug testing; and that he satisfy all reasonable demands of his supervising probation officer.

Two previous revocation petitions were filed, one on September 15, 2021, and a second one on November 15, 2021, after Cockrell failed to appear in circuit court for the first revocation hearing. At a revocation hearing held on December 3, the circuit court ordered Cockrell to serve sixty days in the Faulkner County Detention Center and continued his original twelve-month period of probation.

On January 28, 2022, the State filed a third revocation petition and, on February 23, filed an amended petition alleging that Cockrell had violated the terms and conditions of his probation by (1) failing to make payments on his court-ordered fines and fees; (2) failing to report to his probation officer on February 8 for a scheduled office visit; and (3) committing the new offense of aggravated assault in Conway County on July 25, 2021. The petition specifically alleged that after Cockrell failed to report on February 8, probation officer Bryan Padgett attempted to conduct a home visit at Cockrell's residence on February 17. Padgett was unable to locate Cockrell and left instructions at his residence notifying him to report to the probation office on February 22 at 9:00 a.m. Cockrell, however, again failed to report, and as of the date the amended revocation petition was filed on February 23, Cockrell's whereabouts were unknown. On June 12, Cockrell was arrested.

A fourth revocation petition was filed on June 22, which, in addition to the allegations of the prior petitions, alleged that Cockrell had violated the conditions of his probation by committing new crimes, using illegal drugs, and failing to pay supervision fees. And on September 2, the State filed the final revocation petition alleging failure to report, failure to pay supervision fees, and failure to pay fines and court costs.

The revocation hearing was held on October 17, at which time the State announced that it intended to proceed only on the allegations that Cockrell had failed to make court-ordered payments and had failed to report to his probation officer.

At the hearing, Padgett testified that he is Cockrell's probation and parole agent and had been his only supervising officer since Cockrell was placed on probation. Padgett testified that Cockrell had failed to report numerous times: February 8, February 22, June 30, July 15, and September 2, 2022. Cockrell also failed to turn himself in on July 14. Padgett testified that he conducted home visits but was unable to make contact. He explained that he left reporting instructions at the residence on file, yet Cockrell still failed to report. Padgett contacted the Faulkner County Sheriff's Office and learned that Cockrell had an outstanding balance of \$1,040, with the last payment on file having been made on April 22, 2021. He owed \$315 in probation-supervision fees as of September 2, 2022. On cross-examination, Padgett said that Cockrell had reported as directed "maybe 25 to 50 percent of the time[.] . . . Other than that, [he'd] not had much contact with him."

Cockrell testified on his own behalf and claimed to have instructed his family to go to both the Faulkner County Sheriff's Office and the probation office to make his court-

ordered payments for him. He admitted, however, that he did not personally make any payments and did not have any receipts reflecting that his family had made any payments. He also admitted that he was aware of the monthly reporting requirement yet often failed to report to Padgett as directed. Cockrell testified that he reported in June 2022 when he got out of jail and Padgett told him to report. Cockrell asserted that he knows his fines have been paid. He claimed to have stayed in contact with Padgett. He explained that Padgett called him numerous times, and he answered the phone, or if he missed a call, he called Padgett back. Cockrell acknowledged that he understands that he was to see Padgett monthly, but he admitted that he had not done that every month.

The circuit court revoked Cockrell's probation and, on November 1, 2022, entered a judgment and disposition order sentencing him to a term of 365 days in the Faulkner County Detention Center. Cockrell filed a timely notice of appeal on December 1.

## II. *Standard of Review and Applicable Law*

A circuit court may revoke a defendant's probation at any time before the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his or her probation. Ark. Code Ann. § 16-93-308(d) (Supp. 2023); *Tilley v. State*, 2024 Ark. App. 19, at 3, \_\_ S.W.3d \_\_, \_\_. The State's burden of proof in a revocation proceeding is lower than is required to convict in a criminal trial, and evidence that is insufficient for a conviction may be sufficient for a revocation. *Id.* When the sufficiency of the evidence is challenged on appeal from an order of revocation, this court will not reverse the circuit court's decision to revoke unless it is

clearly against the preponderance of the evidence. *Id.* The State need only show that the appellant committed one violation in order to sustain a revocation. *Id.*; *see also Myatt v. State*, 2023 Ark. App. 66. Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the circuit court's superior position to judge the weight and credibility of the testimony. *Leonard v. State*, 2023 Ark. App. 92, at 1-2. The circuit court is not required to believe a defendant's self-serving testimony. *E.g., Jones v. State*, 2022 Ark. App. 511, at 7, 656 S.W.3d 219, 223.

Arkansas Code Annotated section 5-4-303(e)(2) (Supp. 2023) provides that when probation is imposed, a defendant shall be given a written statement explicitly setting forth the conditions under which he or she is being released. The purpose of this written-notice requirement is to assist a defendant in leading a law-abiding life and to avoid any misunderstanding that a violation of the conditions of a probation sentence may result in its revocation. *See Basham v. State*, 2023 Ark. App. 17, at 6-7, 659 S.W.3d 298, 302 (citing Ark. Code Ann. § 5-4-303(a)).

### III. Discussion

#### A. Failure to Pay

Cockrell argues that the State failed to prove that he inexcusably violated the terms and conditions of his probation by failing to make his payments as ordered. The circuit court may revoke a defendant's probation or suspended imposition of sentence if the defendant has not made a good-faith effort to make the court-ordered payments. *See Ruffin v. State*, 2020 Ark. App. 179, at 6, 597 S.W.3d 151, 155. When the alleged violation is a failure to make

payments as ordered, it is the State's burden to prove that the failure to pay was inexcusable; 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. *Turner v. State*, 2019 Ark. App. 534, at 5–6, 590 S.W.3d 158, 161; *Lamb v. State*, 2019 Ark. App. 494, at 3, 588 S.W.3d 409, 411. If the defendant asserts an inability to pay and provides evidence to demonstrate that inability, then the State must demonstrate that the defendant did not make a good-faith effort to pay. *Turner, supra*.

Factors to be considered in determining whether to revoke a probation or suspension for failure to pay include the defendant's employment status, earning ability, and financial resources as well as the willfulness of the failure to pay and any other special circumstances. Ark. Code Ann. § 5-4-205(f)(3) (Supp. 2023). Despite the shifting of the burden of production, the State shoulders the ultimate burden of proving that the defendant's failure to pay was inexcusable. *Bryant v. State*, 2022 Ark. App. 347, at 7. The State can carry its burden of proving willful nonpayment in several ways: (1) undermining the defendant's credibility; (2) showing the defendant's lack of effort; (3) showing that a defendant failed to make a bona fide effort to seek employment or borrow money; or (4) showing that the defendant is spending money on something nonessential or illegal instead of paying restitution. *Id.* (citing *Hanna v. State*, 2009 Ark. App. 809, 372 S.W.3d 375).

Here, Cockrell testified that he had provided funds to his family to make payments on his case at the Faulkner County Sheriff's Office. Cockrell testified that they had receipts but that he did not have them in his possession due to his incarceration. Cockrell argues

that once he testified that he made a good-faith attempt to make payments—albeit through his family members—and that his lack of paying them himself was due to his incarceration, the burden then shifted to the State to prove that it was inexcusable. He notes that the State put on no evidence to contradict either that his family members were to make payments or that the failure to pay was due to Cockrell’s incarceration. Additionally, he submits that there was no evidence introduced to indicate the amount, frequency, or location of any payments for probation—only for fines and court costs. Accordingly, Cockrell urges that the revocation based on his failure to pay should be reversed and dismissed.

We disagree and hold that the circuit court’s determination that Cockrell inexcusably failed to pay fines, fees, and costs was not clearly against the preponderance of the evidence. When a probation violation involves failure to pay fines and the State has introduced evidence of nonpayment, the burden shifts to the defendant to provide a reasonable excuse for the violation. Here, Cockrell’s probation officer, Padgett, testified that, since April 22, 2021, Cockrell had made no payments on his fines and fees, resulting in a balance due of \$1,040 in fines and \$315 in supervision fees. Cockrell testified that while he had not personally made any of the court-ordered payments, he had his family members go to the Faulkner County Sheriff’s Office and make the payments but acknowledged that he had no receipts showing that his family had made any payments.

The circuit court was in a superior position to assess the credibility of the conflicting testimony, and it decided to credit Padgett’s testimony that Cockrell had failed to pay his fines and fees as required by the conditions of his probation over Cockrell’s unsupported,

self-serving testimony. See, e.g., *Jones*, 2022 Ark. App. 511, at 7, 656 S.W.3d at 223. We decline Cockrell’s invitation to reassess the credibility of the testimony and affirm on this point.

#### B. Failure to Report

Cockrell argues that the State failed to prove he violated his requirement to report. First, the State introduced the general conditions of supervised probation, but Cockrell points out that nowhere in the conditions does it indicate the frequency with which he was required to report to his probation officer. Nevertheless, Cockrell testified in his own defense that he knew he was to see Padgett monthly but admitted he had not done so every month. However, he also testified that he reported to his probation officer in June 2022 when he got out of jail, that he had stayed in contact with Padgett, and that he contacted Padgett if he missed a call from him. Cockrell maintains that the State did not rebut his testimony that he maintained contact with Padgett. Cockrell argues that his partial compliance, his periods of incarceration, and his communication with Padgett, show that the State did not prove by a preponderance of evidence that he violated the requirement to report to his probation officer.

We disagree and hold that the circuit court’s determination that Cockrell inexcusably failed to report to his probation officer was not clearly against the preponderance of the evidence. This court has held that, despite a lack of resources, the failure to report is inexcusable when the appellant fails to put forth “even a modicum of effort.” See *Goad v. State*, 2021 Ark. App. 483, at 5. Padgett testified that Cockrell failed to report as directed on



numerous occasions and that he tried to conduct home visits at Cockrell's residence but was unable to contact him. Padgett stated that he left reporting instructions at Cockrell's residence, but Cockrell still failed to report. Moreover, Cockrell testified that he was aware of the requirement to report to Padgett monthly and that on one date he did not report because he was incarcerated.

As previously noted, the circuit court was in the superior position to assess the credibility of the testimony, and to the extent Cockrell denied that he failed to report to his probation officer on all of the other dates in which incarceration was not his excuse, the circuit court did not clearly err in determining that Padgett's testimony that Cockrell had failed to report as directed was more credible. See, e.g., *Holmes-Childers v. State*, 2016 Ark. App. 464, at 4, 504 S.W.3d 645, 648. Accordingly, we affirm.

Affirmed.

GRUBER and BARRETT, JJ., agree.

*Dusti Standridge*, for appellant.

*Tim Griffin*, Att'y Gen., by: *Christopher R. Warthen*, Ass't Att'y Gen., for appellee.