ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CACR 07-502

JANUARY 16, 2008

ROBERT CLAYTON PETERS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT
[NO. CR2003-421(I)]

HONORABLE GARY RAY COTTRELL, JUDGE

AFFIRMED; MOTION TO RELIEVED IS GRANTED

This is a no-merit appeal concerning a judgment resulting from a revocation proceeding. In June 2004, appellant Robert Clayton Peters entered a no-contest plea to having committed the crime of writing a hot check. He was given a suspended imposition of sentence for five years conditioned on particularly enumerated good-behavior conditions, as well as the payment of restitution followed by payment of fines and costs. The restitution order was for $2,919.32, to be paid in increments of $50 per month beginning in July 2004. Appellant did not abide by his payment schedule, and the State petitioned to revoke his suspension in June 2006. The cause was heard on September 6, 2006, but was continued for ninety days, to December 6, 2006, in order for appellant to have another opportunity to pay $500 toward restitution by September 16 and to pay $50 per month thereafter. This was

formalized in an order filed by the trial court. On December 6, court was resumed, but appellant had not paid as ordered, nor did he appear for this December 6 hearing. The cause was delayed for this reason, an arrest warrant issued, and the case was recalled to complete the revocation hearing on March 14, 2007.

The trial court heard testimony from State's witnesses, verifying and stating that appellant had not paid anything on restitution since November 2005. Appellant testified, admitting that he was behind and that he had no excuse. Appellant agreed that he had been given a second chance at the September 2006 hearing to catch up, but that he failed to do so, even though he received monthly disability payments. Appellant agreed that he failed to appear in December 2006, but offered no viable reason for that failure. At the conclusion of the hearing, the trial court revoked appellant's suspended imposition of sentence and then sentenced appellant to ten years in prison. A timely notice of appeal followed.

Appellant's counsel has filed a motion to be relieved and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Ark. Sup. Ct. R. 4-3(j) (2007), asserting that the appeal is wholly without merit. Appellant was served with his counsel's motion and brief. Appellant has not filed points for reversal in this matter. The State cites Ark. Sup. Ct. R. 4-3(j)(3) as grounds for its decision not to file an appellee's brief. After an examination of this appeal under the proper standards, we affirm appellant's revocation and grant counsel's motion to be relieved.

The only adverse ruling was the revocation of the suspension. Thus, this is a question of the sufficiency of the evidence to revoke. To revoke probation or a suspension, the circuit

court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Stultz v. State*, 92 Ark. App. 204, 212 S.W.3d 42 (2005); *see also* Ark. Code Ann. § 5-4-309(d). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). We do not reverse a circuit court's findings on appeal unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003). When appealing a revocation, the appellant has the burden of showing that the circuit court's findings are clearly against the preponderance of the evidence. *Rudd v. State*, 76 Ark. App. 121, 61 S.W.3d 885 (2001). In determining where the preponderance of the evidence lies, we defer to the circuit judge's superior opportunity to determine the credibility and weight of the testimony. *Jones v. State*, 355 Ark. 630, 144 S.W.3d 254 (2004).

Appellant admitted that he failed to pay restitution as ordered and to which he agreed, even after a ninety-day grace period was given him to become current. He offered no excuse for this violation, reasonable or otherwise. We hold that no non-frivolous argument could be asserted on appeal regarding the revocation.

We affirm the conviction entered upon revocation and grant counsel's motion to be relieved.

GRIFFEN and MARSHALL, JJ., agree.