

ARKANSAS COURT OF APPEALSDIVISION IV
No. CACR12-641

BRIAN SHACKELFORD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered March 13, 2013

APPEAL FROM THE SHARP
COUNTY CIRCUIT COURT
[NO. CR-2004-29, NO. CR-2005-136]HONORABLE HAROLD S. ERWIN,
JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Brian Shackelford appeals an order that revoked his probation and sentenced him to thirty years' imprisonment. He argues that there was insufficient evidence that he violated the conditions of his probation. We affirm the revocation of probation.

On 2 April 2007, the Sharp County Circuit Court sentenced Shackelford in two different criminal cases. In CR-2004-29, Shackelford was sentenced to two terms of ten years' probation for possession of methamphetamine and possession of drug paraphernalia. In CR-2005-136, Shackelford was again sentenced to two terms of ten years' probation for possession of methamphetamine and possession of drug paraphernalia, plus six years' probation for vehicular fleeing. Shackelford was also ordered to pay \$1650 in fines and costs and \$500 in fees. His conditions of probation included that he not commit any criminal offense punishable by imprisonment; that he not use, sell, distribute, or possess any controlled substance; and that

he comply with the special conditions imposed by the court.

In March 2012, the State filed a petition to revoke Shackelford's probation in CR-2004-29 and CR-2005-136. The petition alleged that Shackelford had incurred additional felony charges and that he had not paid his judgment fees. The court held a revocation hearing in late April 2012. Mike Zeiger, an investigator for the Third Judicial Task Force, testified that he had filed fourteen drug-related felony reports on Shackelford for offenses that occurred while Shackelford was on probation. Zeiger also said that drugs (including methamphetamine) and drug paraphernalia were found inside Shackelford's residence when the police searched it.

At the close of the State's case, Shackelford moved to dismiss based on failure to prove that he had violated his probation. He argued that to revoke his probation, the State was required to show more than that he had been charged with committing more offenses. The prosecutor argued that the State had shown, through Zeiger's testimony, that Shackelford had been arrested on fourteen felony charges and that drugs and drug paraphernalia were found in his residence. The court denied the motion.

Shackelford testified that he was addicted to methamphetamine and asked that he be placed in a treatment facility for addiction if his probation was revoked. He acknowledged that he had been charged with possession of methamphetamine and other narcotic drugs. He stated that methamphetamine was "tearing [his] world up" and that it was the "ruin of [his] life." And he never openly disavowed using methamphetamine during his probation period.

At the close of testimony Shackelford again argued that the evidence was insufficient for revocation, but the court ruled that it was revoking probation and sentencing Shackelford to three terms of ten years' imprisonment to run consecutively. Shackelford timely appealed to this court.

In revocation proceedings, a circuit court must find by a preponderance of the evidence that a defendant inexcusably violated a condition of probation. *Mewborn v. State*, 2012 Ark. App. 195. We will not reverse a circuit court's findings on appeal unless they are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Haley v. State*, 96 Ark. App. 256, 240 S.W.3d 615 (2006).

Shackelford argues several bases upon which to reverse the circuit court's ruling. First, he argues that the conditions of his probation were not a part of the record; he did not raise this objection below, so we will not consider it now. *Magness v. State*, 2012 Ark. App. 609, ___ S.W.3d ___. Second, Shackelford appears to argue that the court failed to make sufficient findings to support its decision; this issue was not raised and ruled upon below, so we will not consider it on appeal. *Magness, supra*; see also *Beebe v. State*, 2009 Ark. App. 113, 303 S.W.3d 89 (holding that appellant waived his right to have the court provide a written statement of the evidence relied on and the reasons for revocation by his failure to object or to request the statement below).

Shackelford's main argument is that the State failed to present sufficient evidence that he violated the conditions of his probation by committing a criminal offense and instead only

showed that he had been charged with subsequent offenses. The State counters that the proof required for a conviction (beyond a reasonable doubt) and the proof required for revocation (preponderance of the evidence) is different and it met the lower burden.

This case presents a close call, but we cannot say that the circuit court's findings are clearly against a preponderance of the evidence. The State presented evidence that Shackelford's residence contained drugs and drug paraphernalia and, by his own admission, Shackelford had used methamphetamine—though he did not expressly admit to using while on probation. And Shackelford never pointedly disavowed the State's testimony that law enforcement found methamphetamine and drug paraphernalia inside his residence. We therefore affirm the revocation of probation.

Affirmed.

VAUGHT and WOOD, JJ., agree.

R.T. Starken, for appellant.

Dustin McDaniel, Att'y Gen., by: *Laura Shue*, Ass't Att'y Gen., for appellee.