

Appellant Leon Deshawn Wright appeals from the revocation of his suspended sentence in Oklahoma County District Court Case No. CF-2014-1676. On April 30, 2015, Appellant entered a negotiated plea of guilty to Knowingly Concealing Stolen Property (21 O.S.2001, § 1713) After Former Conviction of Felonies (21 O.S.Supp.2002, § 51.1) He was sentenced to a term of imprisonment for five years, all suspended. On May 9, 2016, the State filed an application to revoke the suspended sentence alleging Appellant had failed to obtain a mental health assessment, failed to report to a drug rehabilitation program, failed to pay various supervision fees and possessed marijuana.

On August 27, 2018, a hearing on the application to revoke was held before the Honorable Bill Graves, District Judge. Judge Graves granted the State's application and revoked the five-year sentence in full.

ANALYSIS

At a hearing where the State seeks revocation of a suspended sentence, the question is whether the suspended portion of the sentence imposed should be executed, and the court makes a factual determination as to whether the terms of the suspension order have been violated. *Robinson v. State*, 1991 OK CR 44, ¶ 3, 809 P.2d 1320, 1322. The violation "need be proven only by a preponderance of the evidence." *Tilden v. State*, 2013 OK CR 10, ¶ 5, 306 P.3d 554, 556. A trial court's decision to revoke a suspended sentence should not be overturned absent a finding of an abuse of discretion. *Jones v. State*, 1988 OK CR 20, ¶ 8, 749 P.2d 563, 565.

In his first proposition of error, Appellant contends the evidence presented by the State was insufficient to establish he violated the terms of his probation by possessing marijuana. Appellant is correct. However, the State did produce sufficient evidence to prove the remaining violations it alleged. It was therefore not an abuse of

discretion to revoke Appellant's suspended sentence. *See Tilden v. State*, 2013 OK CR 10, ¶ 10, 306 P.3d 554, 556 ("Violation of even one condition of probation is sufficient to justify revocation of a suspended sentence."). Proposition I is denied.

In his second proposition of error, Appellant contends the failure to pay fees associated with probation was not willful and therefore it was error for the district court to revoke the sentence on this basis. We disagree. As we have previously determined, "the State bears the initial burden to prove the probationer has failed to make restitution payments." *Winbush v. State*, 2018 OK CR 38, ¶ 12, 433 P.3d 1275, 1279. Then, "the burden shifts to the probationer to prove that his failure to pay was not willful." *Winbush*, 2018 OK CR 38, ¶ 12, 433 P.3d at 1279-80. Here, Appellant did not testify, nor did he offer the trial court any evidence to inform it of his employment status over the probationary period or of any good-faith efforts made to pay the fees. Thus, Appellant failed to meet his burden of showing the failure was not willful. Proposition II is denied.

In his final proposition of error, Appellant contends the nature of his violations do not warrant the full revocation of the five-year sentence. Again, we disagree. We have previously found the failure to

report alone is an “ample basis for revoking [a] suspended sentence.”
Moore v. State, 1971 OK CR 433, ¶ 15, 489 P.2d 1359, 1360.
Proposition III is denied.

DECISION

The order of the District Court of Oklahoma County revoking Appellant’s suspended judgment and sentence in Case No. CF-2014-1676 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2019), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMACOUNTY
THE HONORABLE BILL GRAVES, DISTRICT JUDGE**

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OPINION BY: HUDSON, J.:
LEWIS, P.J.: CONCUR
KUEHN, V.P.J.: CONCURS IN PART/DISSENTS IN PART
LUMPKIN, J.: CONCUR
ROWLAND, J.: CONCUR

RA/F

KUEHN, V.P.J., CONCURRING IN PART/DISSENTING IN PART:

I concur in results of Propositions I and III, as the Appellant had violations other than failure to pay that justified revocation of his suspended sentence.

However, I dissent to the finding in Proposition II. The *Winbush* Court established that the burden rests on the defendant to prove the non-payment of fines and costs was not willful. *Winbush v. State*, 2018 OK CR 38, 433 P.3d 1275, 1281 (Kuehn, J., dissenting, at ¶ 4).¹ Appellant presented evidence that he was homeless and unemployed since 2016, as he was suffering from acquired immunodeficiency syndrome (or AIDS).² I am still waiting for what evidence will satisfy this Court after *Winbush* to reverse a finding of

¹ See also *Spann v. State*, Case No. RE-2017-706, (unpub. Nov. 8, 2018) (Kuehn, J., concurring in result); *Bailey v. State*, Case No. RE-2016-875, (unpub. May 3, 2018) (Kuehn, J., concurring in result); *Cotton v. State*, Case No. RE-2016-193, (unpub. Jan. 18, 2018) (Kuehn, J., concurring in part/dissenting in part); *Black v. State*, Case No. RE-2018-134, (unpub. Nov. 29, 2018) (Kuehn, J., concurring in result); *Sherman v. State*, Case No. RE-2016-642, (unpub. July 12, 2018) (Kuehn, J., dissenting) *Conroy-Perez v. State*, 2019 OK CR 5, (Kuehn, V.P.J., dissenting).

² Wright's probation officer confirmed Wright was homeless for much of the time he supervised him, but at the time of the hearing, he had not supervised Wright in over a year and a half.

revocation for failure to pay fines and costs after defendants are proving they are indigent.

I would find the trial court abused its discretion in finding revocation should occur based upon failure to pay, but affirm the revocation on other grounds.