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IN THE COURT OF APPEALS OF INDIANA

RAYMOND SMALLS, a/k/a RAYVONN NELSON,
Appellant-Defendant,
vs.
STATE OF INDIANA,
Appellee-Plaintiff.

No. 49A05-0908-CR-486

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0803-CM-60515

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Raymond Smalls appeals the revocation of his probation. Smalls raises one issue which we revise and restate as whether the evidence is sufficient to support the revocation of his probation. We affirm.

The facts most favorable to the probation revocation follow. On May 19, 2008, Smalls was sentenced to one year with 233 days suspended to probation after pleading guilty to invasion of privacy as a class A misdemeanor. Smalls was required to report as directed to the Probation Department and serve his first ninety days on GPS monitoring.

Smalls was released from parole for a prior offense and was required to report to Probation Intake on May 19, 2009 once he was released from parole. Smalls failed to contact the Probation Department.

On May 29, 2009, the State filed a notice of probation violation which alleged that Smalls violated his probation by: (1) failing to report to Probation Intake; and (2) failing to comply with Marion County Community Corrections GPS. The notice also stated that Smalls's maximum release date from Parole was May 19, 2009.

After a hearing, the trial court referenced Smalls's failure to report to probation and found that Smalls violated his probation. The trial court sentenced Smalls to 120 days executed in the Department of Correction.

The issue is whether the evidence is sufficient to support the revocation of his probation. The State must prove a probation violation by a preponderance of the evidence. Parker v. State, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997) (citing Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995), reh'g denied). On review, we neither weigh the

evidence nor judge the credibility of witnesses. Id. We look only to the evidence most favorable to the revocation. Id. So long as substantial evidence of probative value exists to support the trial court's finding that a violation occurred, we will affirm the judgment. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999).

Smalls argues that "[n]o definitive information was ever received that [he] had in fact been released from parole." Appellant's Brief at 12. Smalls concedes that Elisha Snow, an employee of the Marion County Probation Department, testified that Smalls had been released from parole but points to the following exchange during the cross examination of Snow:

Q . . . And Mr. Smalls has not completed his parole, correct?

A I have no idea.

Transcript at 8. Smalls also argues that "[t]he issue here is whether the State established that he failed to [report to probation] or, more importantly, that his obligation to do so had been triggered." Appellant's Brief at 12.

Some probation violations can serve as bases for revoking probation at any time between sentencing and the completion of the probationary period. See Crump v. State, 740 N.E.2d 564, 568 (Ind. Ct. App. 2000) (holding that although the defendant's actual probation had not yet begun, a defendant's "probationary period" begins immediately after sentencing), trans. denied; Gardner v. State, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997) (holding that once a defendant has been sentenced, the court may revoke probation,

upon a proper showing of a violation, at any time before the completion of the probationary period); Ashba v. State, 570 N.E.2d 937, 939 (Ind. Ct. App. 1991) (holding that a trial court may revoke probation before a defendant enters the probationary phases of his sentence), affirmed by 580 N.E.2d 244 (Ind. 1991), cert. denied, 503 U.S. 1007, 112 S. Ct. 1767 (1992).

In Gardner, the court noted in a footnote that "[t]here are some rules of probation that may not be applicable to prospective violation. For example, a probationer is required to report to his probation officer. A defendant could hardly do so while incarcerated, and it would not be practical to do so before the period of probation commences." 678 N.E.2d at 401 n.7. However, unlike the example in Gardner, Smalls was not incarcerated and could have reported to probation.

Smalls's arguments are merely a request that we reweigh the evidence, which we cannot do. See Parker, 676 N.E.2d at 1086. Snow testified that Smalls had been released from parole, was required to report to Probation Intake on May 19, 2009 once he was released from parole, and had failed to contact the Probation Department.

Based on our review of the record and considering the evidence most favorable to the judgment, we cannot say that the trial court erred in finding by a preponderance of the evidence that Smalls violated his probation by failing to report to Probation Intake.[1] See Whatley v. State, 847 N.E.2d 1007, 1010-1011 (Ind. Ct. App. 2006) (refusing to reweigh

[1] Smalls also raises the issue of whether the trial court erred in admitting hearsay evidence at the revocation hearing relating to the allegation that Smalls failed to comply with GPS monitoring. Because we conclude that the evidence was sufficient to support the trial court's decision to revoke Smalls's probation based upon the fact that he failed to report to Probation Intake, we need not address this issue.

the evidence, although the defendant offered contrary evidence to that submitted in support of revocation, and affirming the trial court's decision to revoke the defendant's probation); Bussberg v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005) (affirming the trial court's revocation of defendant's probation and holding that proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation), reh'g denied, trans. denied.

For the foregoing reasons, we affirm the trial court's revocation of Smalls's probation.

Affirmed.

MATHIAS, J., and BARNES, J., concur.