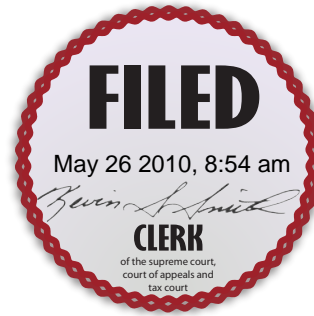


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 02A05-1001-CR-7
	)	
PATRICK J. DAVIS,	)	
	)	
Appellee-Defendant.	)	

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Robert J. Schmoll, Magistrate  
Cause No. 02D04-0403-FB-45

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**May 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

The State of Indiana appeals the trial court's order dismissing the State's petition to revoke appellee-defendant Patrick J. Davis's probation. The trial court concluded that because there was no evidence that Davis had been advised of the terms of probation, revocation was improper. The State contends that a defendant need not specifically be advised of the automatic term of probation prohibiting the commission of a new offense. Finding that it need not be established that the defendant was explicitly advised that he is prohibited from committing new offenses while on probation, we reverse and remand for further proceedings.

### FACTS

On April 12, 2005, Davis pleaded guilty to two counts of class B felony criminal confinement. The trial court later sentenced Davis to concurrent twenty-year terms on each conviction, with ten years executed and ten years suspended to probation. Davis's ten-year term of probation began on April 25, 2009.

On July 1, 2009, the State filed a petition to revoke Davis's probation because he had been convicted of class A misdemeanor unauthorized absence from home detention on May 2, 2009. The trial court held a hearing on August 12, 2009, after which it dismissed the petition, finding that nothing in the record established that Davis had been informed of the terms of his probation. The State now appeals.

## DISCUSSION AND DECISION

We review the trial court's decision on a petition to revoke a defendant's probation for an abuse of discretion, which occurs when the court's decision is clearly against the logic and effect of the facts and circumstances. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

As a general rule, a defendant must be advised of his probation terms. Ind. Code § 35-38-2-1(a). Such an advisement places a probationer on notice of what conduct is expected of him and, conversely, what conduct will not be tolerated. Kerrigan v. State, 540 N.E.2d 1251, 1252 (Ind. Ct. App. 1989).

Our Supreme Court has explained that “[t]he law of this state is well-established that although a trial court must specify the conditions of probation in the record, it is always a condition of probation that a probationer not commit an additional crime.” Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995) (internal citations omitted). Thus, although the better practice is to specifically include this condition of probation, it is not “necessary” for the trial court to advise a defendant not to commit an additional crime while on probation. Atkins v. State, 546 N.E.2d 863, 865 (Ind. Ct. App. 1989).

Here, there is no evidence that Davis was informed of the terms of his probation. Inasmuch as the prohibition on commission of additional crimes is always a term of probation, however, he need not have been advised specifically of that requirement. Therefore, the trial court erred by dismissing the State's petition to revoke probation.

The judgment of the trial court is reversed and remanded for further proceedings.

DARDEN, J., and CRONE, J., concur.