



Appellant-defendant Matthew Baugh appeals the revocation of his probation, challenging the trial court's imposition of the two-year sentence that had been originally suspended following his guilty pleas to Forgery,<sup>1</sup> a class C felony, and Receiving Stolen Property,<sup>2</sup> a class D felony. Specifically, Baugh claims that he was improperly sentenced because the trial court denied him the opportunity to "present a statement of allocution" before he was sentenced on the probation revocation. Appellant's Br. p. 1. Concluding that Baugh has waived the issue and was properly sentenced, we affirm the judgment of the trial court.

### FACTS

On October 6, 2004, the State charged Baugh with forgery and receiving stolen property. Thereafter, Baugh agreed to plead guilty to both offenses in exchange for a "cap" of no more than an aggregate six-year executed sentence. Appellant's App. p. 26-28. The State also agreed to forego filing additional charges in two unrelated cases. The trial court accepted the plea agreement, and on February 9, 2006, Baugh was sentenced to an aggregate term of four years, with two years suspended to probation.

On May 10, 2007, Baugh was released from the Department of Correction. Thereafter, on May 13, 2008, the State petitioned to revoke Baugh's supervised probation, alleging that Baugh had been convicted of two counts of sexual misconduct with a minor, had failed to pay fees and restitution, and had traveled out of state without

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<sup>1</sup> Ind. Code § 35-43-5-2.

<sup>2</sup> I.C. § 35-43-4-2.

permission. Following the conclusion of a fact finding hearing on September 30, 2009, the trial court revoked Baugh's probation for committing two counts of sexual misconduct with a minor. At a dispositional hearing that commenced on October 28, 2009, the trial court asked defense counsel if Baugh desired to make a statement. In response, defense counsel stated that he would "just . . . make argument." Tr. p. 14. After the State and Baugh's counsel presented their arguments, the trial court asked if there were any further comments, to which Baugh's counsel responded "no." Id. at 17. The trial court then revoked Baugh's originally suspended two-year sentence. Baugh now appeals.

#### DISCUSSION AND DECISION

In addressing Baugh's contention that he was denied the right to make a statement of allocution prior to being sentenced on the probation violation, we note that a trial court is not required to ask a defendant if he desires to speak at a probation revocation hearing. Hull v. State, 868 N.E.2d 901, 903 (Ind. Ct. App. 2007). Although Indiana Code section 35-38-1-5(a) provides that the trial court must ask a defendant at sentencing whether he wishes to make a statement on his own behalf before the sentence is pronounced, a defendant in a probation revocation setting is only denied this right to allocute if he asks to address the court and is denied such an opportunity. Id. In other words, because a trial court does not "pronounce a sentence" at a probation revocation hearing, the judge is not required to ask the defendant if he desires to make a statement. Vicory v. State, 802 N.E.2d 426, 429 (Ind. 2004). However, if the defendant makes a specific request to speak, the trial court must grant that request. Hull, 868 N.E.2d at 903.

In this case, nothing in the record suggests that Baugh desired to speak on his own behalf at the revocation hearing regarding the sentence that should be imposed. In fact, as set forth above, Baugh's defense counsel indicated that he would make an argument about the sentence. Tr. p. 14. Counsel also specifically informed the trial court that no other comments would be made prior to sentencing. Id. at 17. In light of these circumstances, Baugh has waived his right to allocute at the penalty phase of the probation revocation hearing.<sup>3</sup> Hull, 868 N.E.2d at 903. Thus, Baugh's claim that he was improperly sentenced fails.

The judgment of the trial court is affirmed.

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

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<sup>3</sup> As an aside, we also note that Baugh has made no suggestion regarding the substance of an allocution statement if a proper request to the trial court had been made.