

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.

ATTORNEY FOR APPELLANT:

**JASON A. CHILDERS**  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

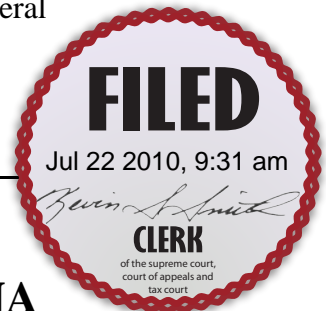
**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ZACHARY J. STOCK**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---



ANTHONY PHILLIPS,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 48A02-0912-CR-1269

---

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Rudolph R. Pyle, III, Judge  
Cause No. 48C01-9003-FC-26

---

**July 22, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Anthony Phillips appeals the trial court's revocation of his probation. We affirm.

## **Issues**

We address the following issues raised in the parties' briefs:

- I. Was there sufficient evidence that Phillips violated the terms of his probation?
- II. Did the trial court abuse its discretion by executing three years of Phillips's suspended sentence?

## **Facts and Procedural History**

On September 4, 1990, Phillips pled guilty to possession of cocaine in excess of three grams with intent to deal, a class B felony, and the trial court sentenced him to ten years, with six years' imprisonment and four years' probation. The Department of Correction released Phillips on August 4, 1994, and he was placed on formal probation for four years. Phillips signed the conditions of probation on August 12, 1994. Phillips was arrested on October 13, 1994, in Grant County, Indiana, and sentenced on July 10, 1995, to eighteen years, with ten years executed and eight years suspended.<sup>1</sup> On April 17, 1995, Phillips violated the probation conditions that he signed on August 12, 1994,<sup>2</sup> and he was arrested on April 27, 2000, in Allen County, Indiana, on a warrant issued for an alleged probation violation on April 18, 1995. The Department of Correction released Phillips on March 13, 2000, and he was placed on formal probation for four years and signed the conditions of probation on June 20, 2000.

---

<sup>1</sup> The record does not specify the nature of this conviction.

<sup>2</sup> The alleged probation violations were failure to report to probation department as requested, failure to pay court costs and probation user's fees, and failure to report current address to probation department. Appellant's App. at 35.

On July 13, 2000, the probation department filed a petition for violation of probation based on Phillips's June 23, 2000, conviction in Jackson County, Michigan, for possession with intent to deliver marijuana. On March 2, 2006, the Michigan trial court sentenced Phillips to a minimum of thirty months' incarceration. On October 26, 2009, the trial court held an evidentiary hearing based on the July 13, 2000, petition for violation of probation. The trial court found that Phillips violated the conditions of his probation because he left the jurisdiction of the supervising county without permission and because on or about March 25, 2000, Phillips possessed with intent to deliver the controlled substance marijuana in Jackson County, Michigan. The trial court revoked Phillips's probation and executed three years of his previously suspended sentence.

## **Discussion and Decision**

### ***I. Sufficiency of Evidence***

Phillips contends that the trial court's judgment that he violated his probation is not supported by the evidence. A probation revocation hearing is in the nature of a civil proceeding, and an alleged violation need be proven only by a preponderance of the evidence. *Baxter v. State*, 774 N.E.2d 1037, 1044 (Ind. Ct. App. 2002), *trans. denied*. We consider the evidence that is most favorable to the trial court's judgment without reweighing the evidence or judging the credibility of witnesses. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995). If substantial evidence of probative value exists to support the trial court's decision that a probationer has violated any terms of probation, we will affirm the trial court's decision to revoke probation. *Id.*

More specifically, Phillips argues that the trial court erred in admitting into evidence a document entitled Judgment of Sentence Commitment to Department of Corrections (“Michigan Judgment”), which indicated that on June 23, 2000, Phillips pled guilty to possession with intent to deliver marijuana in Jackson County, Michigan. Ex. 1. Phillips argues that the Michigan Judgment was hearsay and not properly authenticated. Phillips also argues that the State did not present sufficient information from which the court could properly find the document to be substantially trustworthy.<sup>3</sup>

We disagree with Phillips. Initially, we note that rules of evidence do not apply to probation proceedings. Ind. Evidence Rule 101(c)(2). However, the court must find that hearsay evidence is substantially trustworthy in order for it to be admissible in a probation revocation proceeding. *Reyes v. State*, 868 N.E.2d 438, 441 (Ind. 2007). The substantial trustworthiness test requires that the court evaluate the reliability of the hearsay evidence, and the court should explain on the record why the hearsay is reliable and why that reliability is substantial enough to supply good cause for not producing live witnesses. *Id.* at 442 (quoting *United States v. Kelley*, 446 F.3d 688, 693 (7th Cir. 2006)). Here, the trial court found that the Michigan Judgment was reliable because of the certification located at the bottom of the document; the probation officer requested that Jackson County, Michigan, send a certified copy of the judgment, which was the document received by the probation officer; and a fax tag belonging to the Jackson County Clerk was located at the top of the document. Tr. 14-15.

---

<sup>3</sup> The State contends that Phillips’s argument that the Michigan Judgment is unreliable was waived because he did not argue that it was unreliable below. Phillips objected to the admissibility of the Michigan Judgment based on the document’s lack of certification. Since the trial court ruled regarding the reliability of the document, we will address whether the Michigan Judgment was unreliable.

We agree with the trial court that the Michigan Judgment was sufficiently reliable. *See Whatley v. State*, 847 N.E.2d 1007 (Ind. Ct. App. 2006) (finding that copy of probable cause affidavit completed and signed by detective under oath, which contained relevant evidence concerning probation violation, was sufficiently reliable to be used in probation revocation proceeding).<sup>4</sup> As such, there was sufficient evidence to revoke Phillips' probation.

## ***II. Execution of Suspended Sentence***

Phillips also takes issue with the trial court's decision to execute three years of his suspended sentence. "Probation is a matter of grace and a conditional liberty which is a favor, not a right." *Noethlich v. State*, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). The decision whether to revoke probation is within the sole discretion of the trial judge. *Reyes*, 868 N.E.2d at 440. We review a trial court's decision to revoke probation and its sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. We cannot review the appropriateness of the sanction because Indiana Appellate Rule 7(B), which allows a reviewing court to revise a sentence if it finds the sentence inappropriate in light of the nature of the offense and the character of the offender, does not apply to probation revocation proceedings. *Prewitt v. State*, 878 N.E.2d 184, 187-88 (Ind. 2007). We will only find an abuse of discretion if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Guillen v. State*, 829 N.E.2d 142, 145 (Ind. Ct. App. 2005), *trans.*

---

<sup>4</sup> We are unpersuaded by Phillips's reliance on *Hardwood v. State*, 582 N.E.2d 359 (Ind. 1991), because the out-of-state judgment in *Hardwood* was admitted into evidence in a jury trial, and not a probation proceeding.

*denied.*

Phillips argues that the trial court's execution of three years of his previously suspended sentence was an abuse of discretion given the amount of time that elapsed since the alleged violation occurred. We disagree. The trial court may require a probationer to serve his previously suspended sentence as long as it follows the procedures outlined in Indiana Code Section 35-38-2-3. *Carneal v. State*, 859 N.E.2d 1255, 1257 (Ind. Ct. App. 2007), *trans. denied*. Furthermore, the trial court was not required to give reasons why it chose to impose the particular punishment that it did for the probation violation. *See Bussberg v. State*, 827 N.E.2d 37, 43 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court's decision to execute three years of Phillips's previously suspended sentence was not clearly against the logic and effect of the facts and circumstances given that Phillips has been arrested multiple times throughout the course of his probation and was convicted of another crime in violation of the conditions of his probation. Consequently, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.