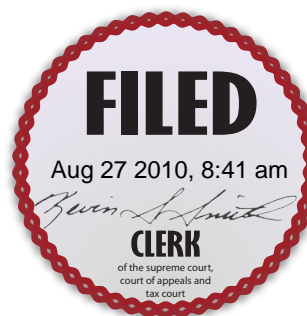


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**DAVID W. STONE IV**  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

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

**IAN MCLEAN**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

THOMAS A. HOPKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A05-1002-CR-125
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Rudolph R. Pyle, III, Judge  
Cause No. 48C01-0709-FC-464

August 27, 2010

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Thomas Hopkins appeals the revocation of his placement in in-home detention and the execution of part of his previously suspended sentence. He presents two issues for our review, which we restate as:

1. Does the evidence support the court's finding that Hopkins violated the conditions of in-home detention?
2. Did the trial court abuse its discretion in sanctioning Hopkins?

We affirm.

On September 20, 2007, the State charged Hopkins with class C felony burglary and class D felony theft. Pursuant to a plea agreement, Hopkins pleaded guilty to class C felony burglary and the State dismissed the theft charge. On April 21, 2008, the trial court sentenced Hopkins to a four-year suspended sentence, to be served on formal probation, and ordered him to pay restitution, court costs, and fees. In early May 2008, the State filed a petition for probation violation seeking revocation of Hopkins's suspended sentence. At a hearing on June 23, 2008, Hopkins admitted to violating his probation. The court deferred imposing a sanction for the violation, but ordered Hopkins to successfully complete the treatment program he was currently attending and to regularly report to probation. The State filed a second petition for probation violation on August 20, 2008, which was amended twice. On December 15, 2008, the trial court noted that Hopkins had pleaded guilty in two separate causes and therefore found that Hopkins had violated the terms and conditions of his probation by committing additional crimes. The court sanctioned Hopkins by ordering that he serve twelve months in-home detention through community corrections.

On March 5, 2009, the State filed a petition alleging Hopkins violated conditions of in-home detention. At a March 19 hearing, Hopkins admitted to violating in-home detention. The court ordered Hopkins to serve thirty-four days at the Madison County Detention Center and gave him seventeen actual days of jail-time credit. Hopkins was again released to in-home detention. On December 8, 2009, the State filed a second petition alleging Hopkins violated in-home detention. On January 20, 2010, the State filed an amended violation of in-home detention, alleging that Hopkins violated in-home detention by (1) committing theft or receiving stolen property, (2) failing to pay weekly fees, and (3) failing to report for two weekly check-ins. At the conclusion of a hearing held on January 25, 2010, the trial court found Hopkins had violated the terms of his home detention by failing to pay his home detention fees on a regular basis and failing to report to home detention on two occasions (November 25 and December 3, 2009) for his weekly check-in. The court made no finding with regard to whether Hopkins committed new offenses in violation of the terms of his probation. The court ordered that 294 days of Hopkins's in-home detention be revoked and that such time be executed in the Department of Correction. The court ordered that Hopkins then be returned to probation for the balance of his sentence. Hopkins now appeals.

1.

Hopkins argues that the evidence is insufficient to support the trial court's revocation of his placement in in-home detention. For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. *Monroe v. State*, 899 N.E.2d 688 (Ind. Ct. App. 2009) (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). The similarities between the

two dictate this approach. *Id.* Both probation and community corrections programs serve as alternatives to commitment to the DOC and both are made at the sole discretion of the trial court. *Id.* A defendant is not entitled to serve a sentence in either probation or a community corrections program. *Id.* Rather, placement in either is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Id.* at 549 (quoting *Million v. State*, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995) (internal quotation omitted)). Thus, our standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. *Monroe v. State*, 899 N.E.2d 688.

A probation hearing is civil in nature, and the State must prove the alleged violation by a preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268 (Ind. 1995). On review, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We look to the evidence most favorable to the court’s judgment and determine whether there is substantial evidence of probative value supporting revocation. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004). If so, we will affirm. *Id.*

Hopkins challenges only the court’s finding of a violation based upon failure to pay fees, arguing that the trial court could not revoke his placement based upon his failure to pay fees without first finding that he recklessly, knowingly, or intentionally failed to pay. *See* Ind. Code Ann. § 35-38-2-3(f) (West, Westlaw through 2010 2nd Regular Sess.) (“[p]robation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay”). Citing *Woods v. State*, 892 N.E.2d 637 (Ind. 2008), Hopkins also

argues that the revocation cannot be based on his failure to pay where there was no evidence that he had the ability to pay.

Even assuming that the trial court erred in finding a violation based upon Hopkins's failure to pay fees, Hopkins is not entitled to relief. Violation of a single condition of probation is sufficient to revoke probation. *Pitman v. State*, 749 N.E.2d 557 (Ind. Ct. App. 2001), *trans. denied*. Here, Hopkins does not challenge the sufficiency of the evidence regarding the trial court's finding of a violation based upon his failure to appear for two weekly check-ins. Chad Lee, a home-detention coordinator for the Community Justice Center, testified that Hopkins failed to report as required on November 25 and December 3, 2009. Lee explained the circumstances of Hopkins's failure to report as stemming from the fact that Hopkins had gotten "scared" because he was behind in paying fees for a substantial amount. *Transcript* at 38. Lee ultimately filed a notice of violation for failing to pay fees and had a warrant issued for Hopkins. At some point thereafter, Hopkins reported, but quickly left when Lee went to find an officer to serve the warrant. The evidence supports the trial court's finding of a violation of in-home detention based upon Hopkins's failure to report.

2.

Hopkins argues that the trial court abused its discretion in partly revoking his placement in Community Corrections upon finding that he violated the conditions of in-home detention. Ind. Code Ann. § 35-38-2.6-5 (West, Westlaw through 2010 2nd Regular Sess.) provides:

If a defendant violates the terms of his placement in community corrections, the court may:

- (1) Change the terms of the placement.
- (2) Continue the placement.
- (3) Revoke the placement and commit the person to the department of correction for the remainder of the person's sentence.

We will review a trial court's decision in this regard is reviewed for an abuse of discretion.

*See Monroe v. State*, 899 N.E.2d 688.

We begin by noting that Hopkins requested that the court place him back on in-home detention as his sanction for the violation. In support of his request, Hopkins sought to offer an excuse for his failure to report. During the sanctions portion of the hearing, Hopkins elicited testimony from his mother that Hopkins failed to report because he had surgery for kidney stones. Hopkins's mother's testimony was vague in that she did not identify the precise date Hopkins failed to report because of an emergency surgery. She testified that she had documentation, but no such evidence was submitted to the court. She also claimed that she left a message reporting such. The record reveals only that "there was a time when [Hopkins] didn't report" and that such time was the result of emergency surgery. In any event, Hopkins failed to report on two occasions and the emergency surgery could serve as an excuse for failing to report on only one of those days. Further, in contrast to Hopkins's evidence, as noted above, Lee testified that Hopkins's failure to report was because he was "scared" because he had accumulated a substantial arrearage in terms of fees he was ordered to pay. *Transcript* at 38.

In further support of his request to be placed back on in-home detention, Hopkins offered the testimony of his program representative, who testified that in the few weeks prior

to the hearing, Hopkins had started taking his obligations under community corrections more seriously and that he had substantially paid down his arrearage with regard to fees. Hopkins also informed the court that he was trying to improve himself by going to school and that he could continue with school only if on in-home detention.

In deciding what sanction to impose, the court noted that Hopkins had repeatedly violated the terms of his probation (specifically noting that this was Hopkins's fourth violation), thereby demonstrating that he was undeterred by the authority of the court or the threat of punishment. Hopkins had clearly not responded positively to more lenient sanctions. The court further noted, and Hopkins acknowledged, that at a prior violation hearing, the court warned Hopkins that another violation would result in the balance of his sentence being executed in the Department of Correction (DOC). Despite such warning, Hopkins failed to report as required. Based on the foregoing, the court revoked 294 days of Hopkins's in-home detention and ordered such time executed in the DOC. Having reviewed the record, we cannot say that the sanction imposed was an abuse of discretion.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.