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*Kevin L. Smith*

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**IN THE  
COURT OF APPEALS OF INDIANA**

[illegible]

No. 73A01-1002-CR-130

STATE OF INDIANA,  
Appellee/Plaintiff.

APPEAL FROM THE SHELBY SUPERIOR COURT  
The Honorable Jack A. Tandy, Judge  
Cause No. 73D01-0310-FC-25

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant Crystal G. Huesman appeals the trial court's determination that she violated her probation. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In November of 2004, Huesman was convicted, pursuant to a plea agreement, of Class C felony forgery, and Class D felony identity deception. The trial court sentenced Huesman to an aggregate term of five years, with all time suspended except forty days, and fifty-nine months to be served on probation. The State has subsequently filed numerous petitions to revoke Huesman's probation. With respect to the first and second petitions, the trial court determined that Huesman had violated the terms of her probation, imposed a portion of Huesman's previously suspended sentence, and ordered that Huesman continue on probation. The third petition was dismissed pursuant to the terms of Huesman's plea agreement in an unrelated criminal conviction.

On October 13, 2009, the State filed a fourth petition to revoke Huesman's probation, alleging that Huesman had violated the terms of her probation by committing the offense of Class A felony dealing in methamphetamine. On January 27, 2010, the trial court conducted a fact-finding hearing at which a representative of the Shelby County Probation Department ("SCPD") testified that Huesman was still on probation when she committed the offense of dealing in methamphetamine on May 19, 2009. Huesman argued that she was not aware she was on probation on that date, but acknowledged that if she was, committing the offense of dealing in methamphetamine would qualify as a violation of the terms of her probation. The trial court determined that Huesman was on probation when she committed the offense of

dealing in methamphetamine and that by committing this new offense, she violated the terms of her probation. The trial court ordered that Huesman serve two years of her previously suspended sentence and terminated Huesman's probation. Huesman now appeals.

### **DISCUSSION AND DECISION**

Probation is a matter of grace and a conditional liberty which is a favor, not a right. The trial court determines the conditions of probation and may revoke probation if these conditions are violated. The decision to revoke probation is within the sound discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion.

*Cooper v. State*, 917 N.E.2d 667, 671 (Ind. 2009) (citations omitted). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

It is well-settled that a probation revocation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all evidence most favorable to the judgment of the trial court without reweighing the evidence or judging the credibility of the witnesses. *Id.* If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke the defendant's probation. *Id.*

Huesman contends that the trial court abused its discretion when it revoked her probation because she was not aware that she was on probation at the time she committed the offense of dealing in methamphetamine. Specifically, Huesman claims that she believed that her probation was terminated when the State dismissed the third petition to revoke her

probation. However, nothing in the record supports Huesman's claim. None of the court documents suggest that Huesman's probation had been terminated and the SCPD's records clearly indicate that Huesman was still on probation when she committed the offense of dealing in methamphetamine on May 19, 2009. Moreover, Huesman acknowledged during the fact-finding hearing that neither she, her attorney, nor the State had any documentation that would seem to support her claim. Huesman's claim effectively amounts to an invitation for this court to reweigh the evidence relating to her erroneous belief that she was not on probation at the time she committed the offense of dealing in methamphetamine, which we will not do. *See Cox*, 706 N.E.2d at 551.

Huesman also contends that the evidence was insufficient to prove that she violated the terms of her probation. Specifically, she claims that the State failed to prove that she had committed a new offense. Upon review, the record reveals that during the fact-finding hearing, a representative of the SCPD testified that on May 19, 2009, Huesman committed the offense of dealing in methamphetamine. The representative of the SCPD further testified that she was personally aware that Huesman had been convicted of said offense. Moreover, Huesman acknowledged that "had I known I was on probation, yes, I clearly would have been in violation of that probation." Tr. p. 25. We conclude that the testimony of the representative of the SCPD and Huesman's acknowledgement that her act of dealing in methamphetamine would be a violation of the terms of her probation is substantial evidence of probative value to support the trial court's conclusion that Huesman violated the terms of her probation, and we therefore affirm the trial court's decision to revoke Huesman's

probation. *See Cox*, 706 N.E.2d at 551.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.