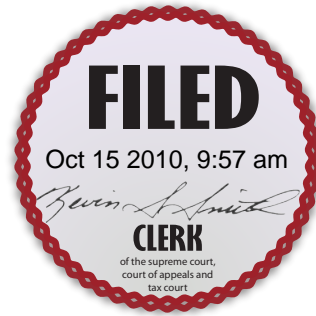


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TRAVIS J. CORDELL,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 29A02-1005-CR-601

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APPEAL FROM THE HAMILTON SUPERIOR COURT  
The Honorable Gail Z. Bardach, Judge  
Cause No. 29D06-0809-FD-5408

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**October 15, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Travis J. Cordell appeals the trial court's revocation of his probation. Cordell raises two issues for our review:

1. Whether, after having already determined that Cordell violated the terms of his probation, the trial court erred in admitting hearsay evidence to determine whether Cordell's violations warranted revocation of his probation.
2. Whether the trial court abused its discretion in ordering Cordell to serve 545 days of his suspended sentence.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On June 12, 2009, Cordell pleaded guilty to possession of a controlled substance, as a Class D felony. Pursuant to the terms of his plea agreement, the trial court sentenced Cordell to 1,095 days in the Department of Correction, with all but two days suspended to probation. On February 8, 2010, the State filed a notice of probation violation. The State alleged that Cordell had used illegal drugs while on probation; had lied to his probation officer; had failed to pay required fees; and had failed to verify his enrollment in a recommended treatment program.

On April 22, the trial court held a hearing on the State's allegations. Cordell appeared at the hearing with counsel and admitted each of the alleged violations. Specifically, Cordell admitted that he had used methadone without a prescription, failed a drug test, and lied to his probation officer about his drug use. Cordell also acknowledged that he had not paid his probation fees or verified his enrollment in a treatment program.

Following Cordell's admissions, the trial court found that Cordell had violated his probation as alleged and asked the parties for recommendations on a disposition.

During the dispositional phase of the hearing, Craig Walters, a probation officer but not Cordell's probation officer, testified. Cordell objected to "triple hearsay," but the Court overruled the objection, stating, "[h]earsay is admissible in probation." Transcript at 15. Walters then testified that a CARE officer had told a representative of Bloomington Meadows that Cordell was not participating in treatment and was abusing prescription medication. The Bloomington Meadows representative relayed those statements to Cordell's probation officer, who informed Walters. Walters also testified that Cordell had missed scheduled appointments with the probation office on numerous occasions, and that Cordell's use of methadone was actually his second failed drug test, the first having occurred in July of 2009. Further, Walters testified that Cordell was currently on probation in Monroe County, which was also pursuing claims that Cordell had violated the terms of his probation. Walters concluded by stating that it was his supervisor's recommendation that Cordell "should serve 180 days in the Department of Correction[]." Id. at 17.

Following Walters' testimony, the prosecutor stated as follows:

Our recommendation would be at least one year. The reasoning behind that is that if the defendant is put into jail, which essentially he would be, and carried back and forth from Monroe County for the violations there, he is never going to get the treatment he needs. I believe he has a very serious drug addiction and that he cannot . . . help himself. And I believe and hope that the Department of Correction[] could help him. I believe that even more time would be better, but I'll leave that to the discretion of the Court.

Id. at 17-18. Cordell's counsel recommended the court adopt the probation office's recommendation. The court agreed with the prosecutor and ordered Cordell to serve 545 days in the Department of Correction. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Hearsay Testimony**

Cordell first contends that the trial court erroneously permitted hearsay testimony in determining whether he violated his probation. Specifically, Cordell asserts that Walters' testimony was not substantially trustworthy, that the trial court failed to explain why it found Walters' testimony substantially trustworthy, and that, for each of those reasons, the court committed reversible error. In Reyes v. State, 868 N.E.2d 438, 440-41 (Ind. 2007), our Supreme Court held that, before it can be admitted in a probation revocation hearing, hearsay testimony must be substantially trustworthy to satisfy the probationer's due process rights. See also Mateyko v. State, 901 N.E.2d 554, 557-58 (Ind. Ct. App. 2009) (following Reyes and determining that triple hearsay was not substantially trustworthy), trans. denied. We cannot agree with Cordell's suggestion that Reyes or Mateyko applies here.

As we have explained:

Probation revocation is a two-step process. [Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997).] First, the court must make a factual determination that a violation of a condition of probation actually has occurred. Id. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Id. Indiana has codified the due process requirements at Ind. Code § 35-38-2-3 by requiring that an evidentiary hearing be held on the revocation and providing for confrontation and cross-examination of witnesses and representation by counsel. Id.; see also Ind. Code § 35-38-2-3(d), (e). When a probationer admits to the violations, the procedural due process safeguards and an

evidentiary hearing are not necessary. Parker, 676 N.E.2d at 1085 [citing Morrissey v. Brewer, 408 U.S. 471, 490 (1972); United States v. Holland, 850 F.2d 1048, 1050-51 (5th Cir. 1988)]. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. Id. In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. Id. at 1086[ ] n. 4.

Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) (emphasis added).

Cordell's argument on this issue misunderstands the order of events that occurred at the revocation hearing. In Reyes and Mateyko, the trial court considered hearsay testimony in determining the initial question of whether the probationer had violated the terms of his probation. Reyes, 868 N.E.2d at 439; Mateyko, 901 N.E.2d at 556-57. That is not the case here, however, where the trial court considered the hearsay testimony only after Cordell had already admitted the alleged violations.

Because Cordell admitted that he had violated his probation, "the procedural due process safeguards" that underlie the substantial-trustworthiness test no longer applied to him. See Cox, 850 N.E.2d at 488; see also Terrell v. State, 886 N.E.2d 98, 101 (holding that, "[b]ecause Terrell admitted the alleged probation violations, . . . it was unnecessary for the trial court to follow the procedural safeguards of Morrissey."), trans. denied. There was no longer any question of whether Cordell had violated the terms of his probation. Rather, the only question that remained was the extent, if any, the trial court should revoke Cordell's probation. And there is no dispute that, in addressing that question, the trial court gave Cordell an opportunity to present evidence that explained and mitigated his violations. See Cox, 850 N.E.2d at 488.

Accordingly, the trial court did not err in admitting the hearsay testimony. Again, that testimony had no bearing on the question of whether Cordell had violated the terms of his probation and, as such, Reyes and Mateyko are inapposite. We affirm the trial court's conclusion that Cordell violated the terms of his probation.

### **Issue Two: Disposition**

Cordell next asserts that the trial court abused its discretion when it ignored the recommended disposition of the probation office and, instead, ordered him to serve 545 days in the Department of Correction. As our Supreme Court has held:

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. Sanders v. State, 825 N.E.2d 952 (Ind. Ct. App. 2005). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Ind. Code Ann. § 35-38-2-3 (West 2007); Goonen v. State, 705 N.E.2d 209 (Ind. Ct. App. 1999). Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. See Sanders, 825 N.E.2d at 956. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Guillen v. State, 829 N.E.2d 142 (Ind. Ct. App. 2005).

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

Cordell argues that the trial court abused its discretion as follows:

the facts and circumstances reveal that this was Cordell's first violation of probation; that the nature of the violation was a failed urine screen, and a failure to comply with treatment; that Cordell was on probation for a possession of controlled substance charge [sic]; and that the trial court's ruling was, in part, based on inadmissible evidence. Furthermore, it is arguable that the Probation Department is the entity that best knows Cordell, and greatest weight should be given to its recommendation.

Appellant's Br. at 5 (citations to the record omitted).

The trial court did not abuse its discretion when it ordered Cordell to serve nearly half of his originally suspended sentence. First, while the probation department recommended Cordell be ordered to serve 180 days, the prosecutor expressly disagreed with that recommendation and asked the court to order Cordell to serve at least one year. The prosecutor's rationale was that more time was necessary to ensure Cordell's rehabilitation. Second, this may have been the first time Cordell had his probation revoked, but it was based on four separate violations, and the evidence showed that Cordell had prior failed drug screens. And, third, insofar as Cordell complains of the court's use of Walters' testimony, for the reasons described above the court did not err on that issue. The court's judgment that Cordell serve 545 days in the Department of Correction was within the facts and circumstances before it. Thus, the court did not abuse its discretion in entering that order.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.