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IN THE COURT OF APPEALS OF INDIANA

THOMAS C. CAMPBELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1002-CR-67
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Senior Judge
Cause No. 45G04-0705-FC-00042

October 22, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Thomas C. Campbell ("Campbell") challenges the Lake Superior Court's revocation of his probation, claiming that the State failed to present sufficient evidence that he violated the terms of his probation. We affirm.

Facts and Procedural History

On October 2, 2007, Campbell pleaded guilty to Class D felony nonsupport of a dependent child. On October 9, 2007, the trial court accepted Campbell's guilty plea and sentenced him to three years in the Indiana Department of Correction, with all but ninety-eight days suspended to probation. As a condition of his probation, Campbell was ordered to pay restitution in the amount of $100.00 per week to be applied toward his $33,770.80 child support arrearage.

On January 24, 2008, the Probation Department filed a petition to revoke Campbell's probation alleging that Campbell had failed to pay restitution and fees. On October 1, 2009, the Probation Department filed an amended petition to revoke Campbell's probation, adjusting the paid and unpaid amounts. At a hearing held on the same date, the parties stipulated that Campbell had paid $4,245.00 in restitution and that he was behind on his weekly payments in the amount of $6,155.00.

On December 3, 2009, the trial court granted the amended petition to revoke Campbell's probation. A sentencing hearing was held on January 7, 2010, and Campbell was sentenced to thirty months in the Lake County Community Corrections Program. Campbell now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Campbell argues that the State failed to present sufficient evidence that he violated his probation by failing to pay restitution. A probation revocation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. Mateyko v. State, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), trans. denied. When reviewing a claim of insufficient evidence to support a trial court's decision to revoke probation, we consider only the evidence most favorable to the judgment, and we neither reweigh the evidence nor judge the credibility of witnesses. Id. Revocation is appropriate if there is substantial evidence of probative value to support the trial court's conclusion that the probationer has violated probation. Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). It is well settled that the violation of a single condition of probation is sufficient to revoke probation. Gosha v. State, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

A trial court may require a defendant to "make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim."[1] Ind. Code § 35-38-2-2.3(a)(5) (2004). When restitution is ordered as a condition of probation, the trial court must inquire into the defendant's ability to pay in order to prevent indigent

[1] A person may also be ordered to "[s]upport the person's dependents and meet other family responsibilities" as a condition of probation. Ind. Code § 35-38-2-2.3(a)(4) (2004). In this case, the trial court ordered Campbell to make weekly payments toward his outstanding child support arrearage, but classified the payments as restitution. Appellant's App. p. 21. For the purposes of probation revocation proceedings, the distinction between probation conditions requiring the payment of restitution and probation conditions requiring the payment of child support holds substantial legal significance. Specifically, the State bears the burden of proof on the issue of a defendant's ability to pay restitution to his or her victim. Szpunar v. State, 914 N.E.2d 773, 779 (Ind. Ct. App. 2009). However, this court has held that where the probation revocation is based on the failure to pay child support, inability to pay is an affirmative defense on which the defendant bears the burden of proof. Runyon v. State, 923 N.E.2d 440, 447 (Ind. Ct. App. 2010), trans. granted. Because it does not affect our resolution of this appeal, we accept Campbell's argument that he was ordered to pay restitution, not child support, as a condition of his probation.

defendants from being imprisoned due to their inability to pay. Id.; Garrett v. State, 680 N.E.2d 1, 2 (Ind. Ct. App. 1997). Further, before a trial court may revoke probation for failure to comply with conditions of a sentence imposing financial obligations, the State must prove that the probationer "recklessly, knowingly, or intentionally" failed to pay. Ind. Code § 35-38-2-3(f) (2004). In order to make this determination, the court must inquire into the reasons for the failure to pay restitution. Garrett, 680 N.E.2d at 2. If the court finds that a probationer has willfully refused to pay restitution or has failed to make sufficient bona fide efforts to pay, his probation may be revoked. Id.

Campbell initially argues that the evidence is insufficient to support the revocation of his probation because at the time he entered into the plea agreement, the trial court failed to inquire into his ability to make weekly payments in the amount ordered. Although Campbell has not provided a transcript of the guilty plea hearing for our review, he concedes that when he entered into the plea agreement, he testified that he was able to pay $100.00 per week. Nevertheless, Campbell argues that "stating that he had the ability to pay restitution is not the same as the trial court's inquiring about his ability to pay restitution." Reply Br. at 2. In essence, Campbell contends that when ordering a defendant to pay restitution as a condition of probation, the trial court cannot rely on a defendant's representations regarding his ability to pay, and must instead undertake an independent investigation of the defendant's financial affairs to determine whether he will be able to pay. We disagree. Campbell's testimony that he was able to make weekly $100.00 payments was sufficient to satisfy the trial court's obligation to inquire into his ability to pay restitution.

Additionally, while Campbell admits that he failed to make payments toward his child support arrearage, he argues that the State did not present sufficient evidence to prove that he did so "recklessly, knowingly, or intentionally" as required by Indiana Code section 35-38-2-3(f). In support of this assertion, Campbell claims that he paid restitution until he was laid off in September 2008, and that he thereafter received unemployment benefits in the amount of $130.00 per week, half of which he contributed toward other child support obligations. Additionally, Campbell claims that while he was unemployed, he actively sought employment.

Campbell's argument is simply an invitation to reweigh the evidence and judge the credibility of witnesses, which we will not do. We first note that the Probation Department initially alleged that Campbell failed to make weekly restitution payments on January 24, 2008, when it filed its original petition to revoke probation, months before Campbell claims to have been laid off. Additionally, although Campbell claims to have been laid off from his full time job as a security guard, where he earned seven dollars per hour and took home $189.00 per week, Christine Castaneda ("Castaneda"), Campbell's probation officer, testified that she was informed by Campbell's supervisor that Campbell "stopped showing up to work" in October 2007. Tr. of Revocation Hearing p. 33. Also, Campbell testified that in May 2008, he began working full time through Sedona Staffing Services, a temporary employment agency where he earned eight dollars per hour, but that he was again laid off and could no longer find work through that agency. However, Castaneda testified that a representative of Sedona Staffing Services informed her that

Campbell had not sought employment through the agency since April 14, 2009, even though jobs were available during that time.

Castaneda's testimony supports the conclusion that Campbell failed to make sufficient bona fide efforts to pay, and therefore recklessly, knowingly, or intentionally failed to pay restitution. The State presented sufficient evidence to support the revocation of Campbell's probation.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.