

Terrance Coody appeals the revocation of his probation. Coody raises one issue, which we revise and restate as whether the trial court properly determined that his decision to proceed without counsel at his revocation of probation hearing was voluntary, knowing, and intelligent. We affirm.

The relevant facts follow. On December 4, 2001, the State charged Coody with forgery as a class C felony¹ and attempted theft as a class D felony.² On February 3, 2006, Coody pleaded guilty to forgery as a class C felony, and the State dismissed the remaining charge. The trial court sentenced Coody to the Indiana Department of Correction for a term of two years with 510 days suspended to probation. On September 25, 2006, the State filed a Notice of Probation Violation alleging that Coody had violated the conditions of his probation by failing to report to the Probation Department.

On May 1, 2007, Coody appeared without counsel at a hearing on the alleged violation. The following exchange occurred:

THE COURT: . . . You have the right to have this matter resolved by admission today, but if you choose to admit, the deck would be stacked against you. The reason I say that, Mr. Coody, is once you admit that you are in violation of probation, these prosecutors are going to recommend that I revoke your probation and send you to prison. You would then have an opportunity to tell me whatever you think I need to hear, but unless I hear your explanation exactly the way you want me to hear it, there is a chance you'll find yourself going to the Indiana Department of Corrections [sic] at the end of the hearing. You can also deny the allegation, in which case I will appoint the Marion County Public Defender to represent you and I will

¹ Ind. Code § 35-43-5-2 (subsequently amended by Pub. L. No. 45-2005, § 2 (eff. July 1, 2005) and Pub. L. No. 106-2006, § 3 (eff. July 1, 2006)).

² Ind. Code § 35-43-4-2 (2004); Ind. Code § 35-41-5-1 (2004).

set this matter for hearing on my next available probation calendar You'll be held in the Marion County Jail . . . but when you come back, you'd have the benefit of an attorney representing you who would attempt to negotiate a resolution that would avoid sending you to prison for the next year and a half. My question for you this morning, Mr. Coody, is whether you think you would benefit from discussing matters with a lawyer before any decision is made on these allegations?

[Coody]: I'm a God—I'm a child of God, sir. When I left here last—

THE COURT: Okay, Mr. Coody, real quick.

[Coody]: Okay. I'll speak.

THE COURT: The options you have are admitting that you are in violation of probation, waiting for these prosecutors to recommend that I revoke your probation and send you to prison, and then offering an explanation for where you've been the last seven months or so. Now, if your explanation doesn't come across to me the way you're hoping it will, you could very easily find yourself going to prison. You can also wait a few weeks, talk to an attorney, and maybe an attorney can present your case for you. It's up to you.

[Coody]: Okay.

THE COURT: If you want to tell me what you want to tell me—

[Coody]: I understand.

THE COURT: —you're running the risk of going to prison right now.

[Coody]: I understand.

THE COURT: Pardon?

[Coody]: I'll speak.

THE COURT: You understand that you're running the risk—

[Coody]: Yes, sir.

THE COURT: All right, Mr. Coody, go and tell me what you want to tell me.

Transcript at 3-5.

Coody then claimed that he had not contacted the Probation Department because he had spent the “majority” of the time between his sentencing hearing and the probation revocation hearing in different prisons and county jails. Id. at 5. The trial court responded:

You decided to tell me your side of the story without benefit of counsel, despite multiple warnings from me. The best you came up with was that you had been locked up for most of the time, not all of the time, but most of the time. That leaves me to conclude that there were opportunities for you to contact the Marion County Probation Department.

Id. at 7. The trial court found that Coody had admitted the violation and revoked his probation. Giving Coody’s admission “some mitigating weight,” the trial court ordered Coody to serve 450 days in the Indiana Department of Correction. Id.

The sole issue is whether Coody’s decision to proceed without counsel at his revocation of probation hearing was voluntary, knowing, and intelligent. Coody argues that the “record herein shows that the trial court failed to properly determine [Coody’s] competency to represent himself, and similarly failed to properly advise [Coody] of the nature, extent and importance of his right to counsel.” Appellant’s Brief at 8. A defendant is entitled to certain due process protections prior to the revocation of his probation. Bell v. State, 695 N.E.2d 997, 998 (Ind. Ct. App. 1998). These protections include “written notice of the claimed violation, disclosure of the evidence against him and the opportunity to be heard and present evidence, the right to confront and cross-

examine witnesses and a neutral and detached hearing body.” Id. Additionally, the defendant is entitled to representation by counsel. Id. (citing Ind. Code § 35-38-2-3(e)).

The law is well settled that whenever a defendant proceeds without the benefit of counsel, the record must reflect that the right to counsel was voluntarily, knowingly, and intelligently waived. Id. Specifically, the trial court must determine the defendant’s competency to represent himself and establish a record of the waiver. Id. at 998-999. The record must show that the defendant was made aware of the “nature, extent and importance” of the right to counsel and the necessary consequences of waiving such a right. Id. at 999.

Here, the trial court warned Coody emphatically and consistently that, in proceeding without counsel, Coody risked being sent back to prison. It further noted the benefit of having an attorney “who would attempt to negotiate a resolution that would avoid sending [Coody] to prison for the next year and a half.” Transcript at 3. Thus, we conclude that the trial court clearly explained the nature, extent, and importance of the right to counsel as well as the necessary consequences of waiving this right. Furthermore, Coody responded several times that he understood the risk but would speak anyway. Thus, there is a record of his competency and waiver of the right to counsel. See Greer v. State, 690 N.E.2d 1214, 1217 (Ind. Ct. App. 1998) (“This record, which also indicates that Greer understood the trial judge’s advisements, establishes Greer’s knowing, intelligent, and voluntary waiver of counsel.”), trans. denied. We therefore

conclude that Coody's waiver was voluntary, knowing, and intelligent.³ See Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003) (holding that the trial court's inquiry and the defendant's responses were adequate to establish that defendant exercised his right to represent himself pro se knowingly, willingly, and voluntarily).

For the foregoing reasons, we affirm the revocation of Coody's probation.

Affirmed.

BARNES, J. and VAIDIK, J. concur

³ Coody also argues that he "was never asked if he desired to proceed without counsel" and that "his own explanation of the matter indicated his inability to contact the probation department." Appellant's Brief at 9. The record reveals that the trial court asked Coody repeatedly whether he wished to proceed without counsel. It also reveals that, although Coody had spent a "majority" of the period in question in jails and prisons, he was otherwise unable to account for why he had not contacted the probation department when he was not incarcerated. Transcript at 5. Accordingly, we find no support in the record for either of Coody's contentions.