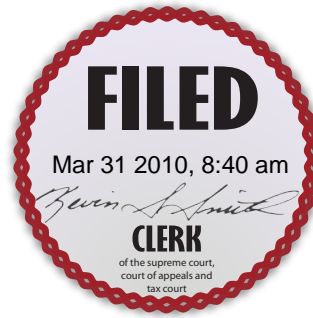


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KEITH J. FLYNN,)

Appellant-Defendant,)

vs.)

No.55A04-0909-CR-514

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane Spencer Craney, Judge
Cause No. 55D03-9707-CF-197

March 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Keith J. Flynn appeals the trial court's revocation of his probation. The sole restated issue presented for our review is whether the State provided Flynn with sufficient notice of the claimed violations of his probation to satisfy due process. We affirm.

Facts and Procedural History

On August 27, 1998, Flynn pleaded guilty to one count of class B felony sexual misconduct with a minor and one count of class D felony dealing in marijuana to a juvenile. Pursuant to the plea agreement, the trial court sentenced Flynn to twenty years for the class B felony and three years for the class D felony, to be served consecutively. The trial court ordered that eight years of Flynn's sentence be suspended and served on probation.¹

On April 10, 2008, Flynn was released from incarceration and began to serve his probation.² On April 21, 2009, the State filed a notice of probation violation. The notice stated that Flynn "is alleged to have had contact with juveniles and failed to cooperate with probation officer by denying these contacts." Appellant's App. at 122. Following an evidentiary hearing on July 15, 2009, the trial court found that Flynn had violated his

¹ The plea agreement here was tendered in conjunction with a plea agreement on related charges filed in the Monroe Circuit Court. In that cause, Flynn pleaded guilty to two counts of class B felony sexual misconduct with a minor. The Monroe Circuit Court sentenced Flynn to twenty years on each count, with twelve years suspended on the first count and thirteen years suspended on the second count, to be served consecutively and also consecutive to the Morgan County sentences.

² Upon Flynn's release from incarceration, the Monroe County Probation Department supervised Flynn's probation.

probation. The trial court revoked Flynn's probation and sentenced Flynn to four years incarceration. This appeal ensued.

Discussion and Decision

Flynn appeals the revocation of his probation. On appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans. denied*. Probation is a favor granted by the State, not a right to which a defendant is entitled. *Id.* However, once the State grants that favor, it cannot simply revoke the privilege at its discretion. *Id.* Probation revocation implicates a defendant's liberty interest, which entitles the defendant to some procedural due process. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997) (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)) (some citations omitted). Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding. *Id.*

The minimum requirements of due process include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation. *Id.* (citing *Morrissey*, 408 U.S. at 489).

Probation revocation is a two-step process. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. First, the trial 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 Indiana 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. *Woods. v. State*, 892 N.E.2d 637, 640 (Ind. 2008).

Flynn's sole restated argument on appeal is that he was denied due process because he was not provided adequate written notice of the claimed violation of his probation. The written notice stated that Flynn "is alleged to have had contact with juveniles and failed to cooperate with probation officer by denying these contacts." Appellant's App. at 122. The record indicates that, during his probation, Flynn attended classes at Ivy Tech. While at Ivy Tech, Flynn was enrolled in several classes. During the evidentiary hearing, probation officer Ken Bulger testified that, in March of 2009, he was alerted by an administrator at Ivy Tech that Flynn had enrolled in a bio-tech manufacturing class with females, some of whom were in high school and under the age of eighteen. Administrators informed Bulger that several of the parents of these females called Ivy Tech to complain about Flynn's behavior. Flynn was offering rides to females, asking them for class notes in exchange for cash, and also offering them food for their class notes. Bulger testified that he was told that Flynn had walked young female students to their cars without permission and also drove his car up to a female student

who was in her car, talked to her, and made her feel uncomfortable. Based upon this conduct, Flynn was expelled from Ivy Tech.

Bulger testified that, on April 6, 2009, he specifically questioned Flynn about his contact with juveniles and Flynn denied having any contact with juveniles. Flynn claimed to Bulger that he did not know that the “girls” he had contact with at Ivy Tech were under the age of eighteen. Tr. at 22. Flynn also told Bulger that he did not know why he had been expelled from Ivy Tech. Jennifer Vaughn, an administrator from Ivy Tech, testified that she met with Flynn and had a long conversation with him about the complaints from parents that she had received, that he was making the girls uncomfortable by his behavior, that she had warned him on a prior occasion to change his behavior, and that he was being expelled for those reasons. Flynn himself testified that he was well aware that at least five “young girls” were in his class at Ivy Tech but claimed he did not know their exact ages. *Id.* at 63-68. He also said he “couldn’t remember” if Ms. Vaughn had mentioned complaints by the parents of the high school girls when she expelled him. *Id.* at 68.

At the close of the evidence, the trial court found as follows:

COURT: However, I do find that you lied to Mr. Bulger on several occasions. I also find your credibility extremely questionable based on the way you presented yourself today. But specifically he lied about he wasn’t sure why Ivy Tech let him go. He didn’t tell . . . disclose his sexual behavior of this Nicole person, and you had from April 2nd to April 31st to disclose these young girls, regardless of their ages, that you chose not to determine their ages You should have avoided young girls at all costs, but the violation is for lying to Mr. Bulger on at least two occasions.

Id. at 80-81. The court’s written order states: “The Court finds defendant did violate Probation by lying to Probation Officer.” Appellant’s App. at 137.

Flynn claims that the trial court revoked his probation for lying to his probation officer about why he was expelled from Ivy Tech, but that the written notice of probation specifically alleged only that he lied to his probation officer about his contact with juveniles. Essentially, Flynn contends that the written notice is specific as to the content of his lie to his probation officer and, thus, he did not have sufficient notice to defend against any other lies. The record reveals that the trial court revoked Flynn's probation for lying to his probation officer on what the trial court stated was "at least two" but likely more occasions.³ The evidence supports the trial court's finding that Flynn lied to his probation officer that he did not know why he was expelled *and* that he lied that he did not know that there were juveniles in his class at Ivy Tech.

The purpose of the written notice requirement is to allow the probationer to defend against the alleged violation. *J.H. v. State*, 857 N.E.2d 429, 432 (Ind. Ct. App. 2006), *trans. denied*. Thus, written notice of the claimed probation violation must be sufficiently detailed to permit the probationer to prepare an adequate defense to that charge. *Id.* Here, we cannot say that Flynn was impeded in his defense. Flynn testified and answered questions by counsel and the trial court regarding his failure to disclose various types of information to his probation officer. Flynn was permitted to explain his behavior and claimed that he was never dishonest with his probation officer. Flynn denied both that he had actual knowledge of why

³ The State also presented evidence that Flynn failed to disclose to his probation officer "sexually risky" behavior that occurred when a woman named Nicole allegedly lifted up her blouse when she was trying to rob Flynn.

he was expelled and the juvenile status of some of his female classmates. The trial court did not find Flynn's testimony credible, however.

Despite Flynn's arguments to the contrary, our review of the record indicates that Flynn received adequate notice of his probation violation. The notice of probation violation sufficiently informed Flynn of the State's intention to revoke his probation and the reason for the revocation. Thus, Flynn's due process rights were not violated.

Affirmed.

RILEY, J., and VAIDIK, J. concur.