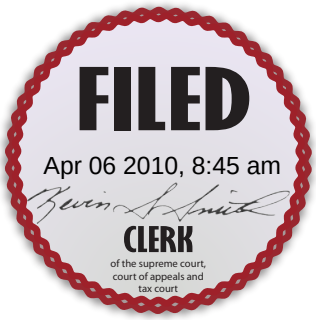

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IN THE COURT OF APPEALS OF INDIANA

CURTIS LEFLORE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0908-CR-800
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
The Honorable Michael Jenson, Magistrate
Cause No. 49G20-0609-FB-176065

April 6, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Curtis Leflore appeals the trial court's determination that he violated the terms of his probation and the trial court's lack of explanation for its sentencing decision. We affirm.

Issues

Leflore raises two issues, which we restate as:

I. whether the trial court properly determined that he violated his probation; and

II. whether the trial court properly explained its sentencing decision.

Facts

On November 22, 2006, Leflore pled guilty to Class B felony possession of cocaine and Class C felony possession of cocaine and firearm. The trial court sentenced Leflore to ten years with two years executed and eight years suspended. The trial court also ordered Leflore to serve two years of probation.

On April 26, 2009, Leflore and Chamontae Jones were passengers in a car involved in a traffic stop. While conducting their investigation, police officers noticed the driver moving something from her area of the car to the area behind Leflore's seat. The driver of the car had a suspended license and was arrested. The police officers asked Jones and Leflore to get out of the car. When Leflore got out of the car, he had a Subway sandwich bag in his hand. Daryl Jones of the Indianapolis Metropolitan Police Department noticed what he believed to be cocaine on the seat where Leflore had been sitting. Officer Jones arrested Leflore and advised him of his Miranda rights. Leflore

and Jones denied that the cocaine was theirs. At some point, Leflore placed the Subway bag on the trunk of Officer Jones's car. Officer Jones asked Leflore what Leflore wanted him to do with the Subway bag, and Leflore told him to throw it away. Officer Jones opened the Subway bag and found another baggie containing what he believed to be cocaine. Officer Jones asked Leflore if he was going to deny that the cocaine in the Subway bag was his. Leflore responded, "No. That's mine but I don't know anything about the other cocaine." Tr. p. 13.

The State charged Leflore with Class D felony possession of cocaine and alleged that he violated the terms of his probation. At the conclusion of the probation revocation hearing, at which Leflore denied possessing the cocaine, the trial court stated it believed Officer Jones's testimony over Leflore's testimony. The trial court concluded, "So the Court finds in favor of the State. His probation is violated. He's got eight years to do at the Department of Corrections." Id. at 25. Leflore now appeals.

Analysis

I. Probation Violation

Leflore argues the trial court should not have found that he violated his probation because the admission of the lab report amounted to fundamental error. At issue is the lab report prepared by the Indianapolis-Marion County Forensic Services Agency showing that the Subway bag contained 1.7078 grams of cocaine. This report was admitted without objection from Leflore.

"The United States Supreme Court has held that the Due Process Clause applies to probation revocation hearings." Reyes v. State, 868 N.E.2d 438, 440 (Ind. 2007).

However, there is no right to probation. Id. The trial court has discretion whether to grant it, under what conditions, and whether to revoke it if conditions are violated. Id. "It should not surprise, then, that probationers do not receive the same constitutional rights that defendants receive at trial." Id. A trial court may admit evidence during a probation revocation hearing that would not be permitted in a full-blown criminal trial. Id. To be admissible in a probation revocation hearing, evidence must pass the substantial trustworthiness test, which requires the trial court to evaluate the reliability of the hearsay evidence. Id. at 442.

Leflore argues that the lab report does not contain sufficient indicia of reliability to be admissible even in a probation revocation proceeding. Because Leflore failed to object to the testimony at the hearing, he waived this issue for appellate review. See McQueen v. State, 862 N.E.2d 1237, 1241 (Ind. Ct. App. 2007). To avoid waiver, he argues fundamental error. "The 'fundamental error' exception is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." Id.

Even assuming the lab report did not contain enough information for it to be substantially trustworthy, Leflore has not established that the admission of the lab report denied him fundamental due process. Leflore points to no irregularities in the report itself and, in fact, the report shows that two of the four samples recovered from the scene did not contain controlled substances. Moreover, Leflore admitted to Officer Jones that the cocaine in the Subway bag was his.

The facts of this case are not like those in Carden v. State, 873 N.E.2d 160 (Ind. Ct. App. 2007), upon which Leflore relies. Carden's probation was revoked because he came within two blocks of a daycare center when he spent the night at his girlfriend's house. To establish the violation, the State relied on the testimony of Carden's probation officer who had used an internet "mapping system" to conclude that an unnamed daycare center was within two blocks of Carden's girlfriend's house. Carden, 873 N.E.2d at 164. In Carden, no evidence was presented regarding the name and manufacturer of the mapping system, how the mapping system works, how often the mapping system is updated, and whether the alleged daycare center was still in business when Carden spent the night at his girlfriend's house. Id. Because this testimony was the only evidence used to revoke Carden's probation, we concluded that its admission amounted to fundamental error. Id.

Unlike Carden, Leflore admitted to a police officer that he possessed cocaine—a violation of the terms of his probation. Under these circumstances, the admission of the lab report did not amount to fundamental error.[1]

II. Explanation of Sentence

Leflore argues the trial court erred when, after it found that he violated that terms of his probation, it revoked his probation and imposed the entire suspended sentence.

[1] In his reply brief, Leflore argues that his statement cannot be used to prove the substance he possessed was cocaine. See Warthan v. State, 440 N.E.2d 657, 660 (Ind. 1982) ("Under the decisions of Indiana courts, a Defendant's extrajudicial statement of possession of contraband, without more, does not establish the corpus delicti, i.e., that he actually possessed the contraband."). Warthan, however, is distinguishable for two reasons. First, unlike Warthan, which involved the sufficiency of the evidence to support a criminal conviction, this case involves the admission of evidence in a probation revocation proceeding. Further, Leflore's statements were corroborated by the lab report, which was admitted without objection.

Leflore claims, "the trial court did not make a determination that the violation warranted revocation of probation and did not give any reasons for imposing the entire eight-year suspended sentence." Appellant's Br. p. 7. Lelfore argues the trial court found he violated probation and "as a matter of course rather than the result of deliberate determination, revoked [his] probation and imposed the suspended sentence." Id. at 8.

"Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation." Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). Upon the revocation of probation, the trial court may: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person's probationary period for not more than one year beyond the original probationary period; and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g). A trial court's sentencing decisions for probation violations are reviewable for an abuse of discretion. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

The Supreme Court has discussed the minimum requirement of due process in a parole revocation proceeding. They include:

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee 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 such as a traditional parole board, members of which need not be judicial officers

> or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey v. Brewer, 408 U.S. 471, 489, 92 S. Ct. 2593, 2604 (1972) (emphasis added). We have repeatedly applied this standard to probation revocation proceedings. See, e.g., Vernon v. State, 903 N.E.2d 533, 536-37 (Ind. Ct. App. 2009), trans. denied; but see Woods, 892 N.E.2d at 640 (describing only (a) through (e) as the minimum requirements of due process for a probation revocation proceeding).

At the conclusion of the probation revocation hearing, the trial court stated, "So the Court finds in favor of the State. His probation is violated. He's got eight years to do at the Department of Corrections." Tr. p. 25. The State concedes the trial court did not articulate why the violation warranted the revocation of probation and the imposition of the entire remaining sentence but argues that, in light of the facts of this case, the trial court was well within its discretion to impose the balance of the sentence.

Although the trial court certainly could have explained its decision to revoke Leflore's probation—as opposed to continuing his probation—and its decision to impose his entire suspended sentence, we do not agree that the trial court was required to issue a written statement explaining its rationale. We addressed a similar argument in Berry v. State, 904 N.E.2d 365, 366 (Ind. Ct. App. 2009), in which Berry argued the trial court abused its discretion by not issuing a sentencing statement when it sentenced him on the probation revocation. We disagreed, reasoning that the trial court merely reinstated a portion of an already imposed sentence, which Berry cannot collaterally attack. Id. (citing Stephens v. State, 818 N.E.2d 936, 939 (Ind. 2004) (observing that a defendant

cannot collaterally attack a sentence on appeal from a probation revocation)). Similarly, because the trial court presumably explained its sentencing decision when it imposed Leflore's original sentence, we cannot conclude that he was denied due process when the trial court revoked his probation and ordered him to serve the remainder of that sentence without explanation.[2]

Conclusion

Leflore has not established that the admission of the lab report amounted to fundamental error. Leflore was not denied due process when the trial court did not explain its decision for revoking his probation and imposing the remainder of his sentence. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.

[2] "[T]he very notion that violation of a probationary term will result in revocation no matter the reason is constitutionally suspect." Woods v. State, 892 N.E.2d 637, 641 (Ind. 2008). Leflore, however, makes no argument that he was denied the opportunity to explain why his violation did not warrant the revocation of probation.