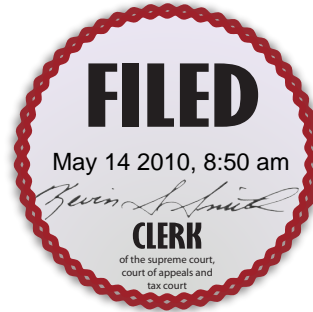


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LARRY A ROBINSON,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 14A01-0911-CR-538

APPEAL FROM THE DAVIESS SUPERIOR COURT
The Honorable W. Timothy Crowley, Special Judge
Cause No. 14D01-0112-CF-907

May 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Larry Robinson appeals the trial court's order revoking his probation, raising one issue for our review, which we restate as whether sufficient evidence supports the trial court's finding that Robinson violated the conditions of his probation. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

In 2002, Robinson pled guilty to dealing in a schedule II controlled substance, a Class B felony. The trial court sentenced him to twelve years, with five years executed and seven years suspended to probation. On March 6, 2004, Robinson was released from prison and placed on supervised probation.

On July 13, 2008, Robinson was driving a red Dodge pickup truck in which Melissa Dyal was a passenger. Officer Gregory Dietsch of the Washington Police Department ran a license plate check on the pickup truck and found its license plate was registered to a white 2001 Chevy. Robinson parked and exited the pickup truck and walked to a nearby Wendy's, while Dyal walked to a nearby Circle K gas station. Officer Dietsch and Sergeant Mize followed Robinson to the Wendy's and advised Robinson he was being detained for investigation. Robinson agreed to cooperate and go back to the pickup truck with the officers. Sergeant Mize looked through the driver's window of the pickup truck and noticed items "that were consistent with products used for the manufacturing of methamphetamine." State's Exhibit 1; Appellant's Appendix at 49. Sergeant Mize then asked for and received Robinson's consent to search the pickup truck. The search uncovered coffee filters, clear tubing, aluminum foil, Coleman camp fuel,

syringes, lithium batteries, empty propane fuel tanks, and plastic cups containing white residue. According to Officer Dietsch's probable cause affidavit, such items are "used in . . . the manufacturing of methamphetamine." Id. Officer Dietsch went inside the Circle K, found Dyal, and escorted her to the pickup truck. A search of Dyal's person uncovered packages of pseudoephedrine cold medicine, which Dyal said she bought at Robinson's request and which she believed Robinson would use to manufacture methamphetamine.

Following Robinson's arrest, a search warrant was issued for Robinson's residence. Officers including Detective Bill Dougherty of the Daviess County Sherriff's Office conducted the search and found the following inside Robinson's residence or on the property: a hard substance that field tested positive for methamphetamine; a clear plastic bag containing a white pill later identified as Lorazepam, a schedule IV controlled substance; a box containing two red pills later identified as Rameron, a legend drug; mortar and pestles containing white powder residue and a spoon containing tan powder residue; numerous syringes, one of them containing a light brown liquid; a calibration scale; washed and drying glassware that smelled of ether; Coleman fuel and empty fuel cans; one "32 oz. bottle Liquid Fire, 1/8 full, ph-0" and "one 32 oz. bottle Roto drain cleaner, 1/2 full, ph-0"; battery strippings and hulls; burnt blister packs of pseudoephedrine; empty blister packs of pseudoephedrine and Sudafed; a Wal-Mart receipt for Sudafed dated July 11, 2008; two empty boxes of CVS-brand cold relief medicine and one empty box of Equate nasal decongestant; plastic tubing; coffee filters containing white powder residue; and a water bottle and two two-liter bottles, with

attached lids and plastic tubing, all “containing off white sludge which was off gassing with ph-0.” Id. at 55-56.

According to Detective Dougherty’s probable cause affidavit, the “off gassing” bottles were a stage of the methamphetamine manufacturing process indicative of a “working meth lab.” Id. at 55. Also inside the residence, officers found pieces of mail addressed to Robinson. Based on the contraband discovered at Robinson’s residence, the State charged him with nine felony counts.¹

On July 23, 2008, the State filed a petition to revoke Robinson’s probation and, on August 6, 2008, filed an amended petition. On August 21, 2009, the trial court held a probation revocation hearing. On September 25, 2009, the trial court issued its order revoking Robinson’s probation and ordering him to serve the previously suspended seven years of his sentence with the Department of Correction. Robinson now appeals.

Discussion and Decision

Probation revocation is a two-step process. Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). First, the State must prove by a preponderance of the evidence that the defendant violated one or more conditions of probation. Ind. Code §§ 35-38-2-3(a)(1), (e). Second, if a violation is proven, the trial court must determine whether the violation warrants revocation. Woods, 892 N.E.2d at 640. Robinson challenges only the sufficiency of the evidence supporting the first step. In reviewing sufficiency of the evidence claims, we neither reweigh the evidence nor judge the credibility of the

¹ These were: Count I, conspiracy to commit dealing in methamphetamine, Count II, dealing in methamphetamine, Count III, possession of methamphetamine with intent to manufacture, and Count IV, possession of methamphetamine with intent to deliver, all Class A felonies; and Count V, unlawful possession of a syringe, Count VI, possession of a controlled substance, Count VII, unlawful possession or use of a legend drug, Count VIII, maintaining a common nuisance, and Count IX, possession of chemical reagents or precursors with intent to manufacture a controlled substance, all Class D felonies.

witnesses. Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995). If substantial evidence of probative value supports the trial court's finding that the defendant violated a condition of probation, we must affirm. Id.

The State alleged, and the trial court found, that Robinson violated the conditions of his probation by committing criminal offenses on or about July 13, 2008. At the revocation hearing, the trial court heard testimony by Detective Dougherty and admitted Officer Dietsch's and Detective Dougherty's probable cause affidavits. The testimony and affidavits were substantial evidence Robinson engaged in criminal activity by possessing methamphetamine and other illegal substances at his residence and manufacturing methamphetamine. See Whatley v. State, 847 N.E.2d 1007, 1010-11 (Ind. Ct. App. 2006) (probable cause affidavit written by officer who discovered cocaine in defendant's residence was among evidence sufficient to support revocation of probation).

Robinson argues the State failed to prove that (1) he was placed on formal probation, (2) he was advised of the conditions of his probation, or (3) the residence where the contraband was found was actually his residence and the search of it was reasonable. The first two arguments are unsupported by the record, which contains the probation order issued by the trial court on May 1, 2002.² The order specifies it is a condition of Robinson's probation that he "not commit any further crimes, misdemeanors or felonies." Appellant's App. at 34. At the bottom of the order is Robinson's signature,

² A copy of this order was attached to the State's original and amended petitions to revoke Robinson's probation. Although the order was not introduced into evidence at Robinson's probation revocation hearing, the trial court could properly take judicial notice of it. See Rosendaul v. State, 864 N.E.2d 1110, 1116 (Ind. Ct. App. 2007) ("A trial court may take judicial notice of the pleadings and filings in the very case that is being tried."), trans. denied. It appears the trial court did so, based on its findings in its probation revocation order referring to both the May 1, 2002, order and Robinson's acknowledgement that he read and understood the order's conditions of probation.

acknowledging he “read the above conditions” and agreed to comply with them. Id. at 36. Robinson’s third argument amounts to a request to reweigh the evidence and judge the credibility of the witnesses, which we may not do. Braxton, 651 N.E.2d at 270. The State presented unequivocal evidence that the officers sought and obtained a search warrant for Robinson’s residence prior to the search and Detective Dougherty knew the residence was Robinson’s based on his prior familiarity with Robinson and the fact pieces of mail addressed to Robinson were found inside. We may not second guess the trial court’s finding that is what happened.

Conclusion

Sufficient evidence supports the trial court’s order revoking Robinson’s probation. The order is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.