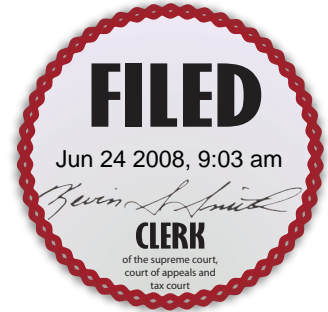


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY SCOTT MORRIS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 42A04-0711-CR-730

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0508-FD-172

June 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jeffrey Morris appeals the revocation of his probation. Morris raises two issues, which we revise and restate as:

- I. Whether the trial court denied Morris his procedural due process rights during his probation revocation proceeding;
- II. Whether the evidence is sufficient to support the revocation of Morris's probation; and
- III. Whether the trial court abused its discretion by imposing the remaining three years of Morris's suspended sentence due to his probation violation.

We affirm.

The facts most favorable to the probation revocation follow. On September 7, 2007, Morris pleaded guilty to nonsupport of a dependent as a class D felony. On September 12, 2007, the trial court held a hearing and sentenced Morris to three years. The trial court ordered Morris to serve two years of his sentence in a work release program and the remaining year on supervised probation. Because there were no vacancies at the work release facility and Morris requested that he be released until there was an opening, the trial court ordered Morris to "home detention/electronic monitoring" pending his admission to the work release facility. Appellant's Appendix at 71. At the sentencing hearing, Morris was informed that he needed to sign up for home monitoring by 1:00 p.m. The trial court's order stated, in part, "[Morris] is **ORDERED** released from custody to report to Ms. Montgomery to be placed on home detention/electronic monitoring immediately after his release from jail. [Morris] is permitted to go at liberty upon the above terms and conditions." Id.

After the sentencing hearing, Morris was released from jail, and Amy Morris, Morris's ex-wife, picked him up. Morris decided not to go to his home monitoring appointment. Instead, Morris drank beer and used methamphetamine.

On October 2, 2007, the State filed a notice of probation violation, which alleged that on the day that Morris was released on probation he was given an appointment time of 1:00 p.m. on that same date, he failed to meet that appointment, and a warrant was issued for his arrest.

At the revocation hearing, Morris's counsel stipulated that Morris violated his probation by not reporting at 1:00 p.m. on the day of the sentencing hearing. The trial court asked to hear some testimony regarding the admission. Morris admitted that he knew that he needed to sign up by 1:00 p.m. for home monitoring, that he failed to sign up by that time, and that he violated the trial court's order. Morris testified that he did not know that a violation of a direct order of the trial court would have constituted a probation violation. Morris's counsel stated, "actually sitting here filling this thing out, I gotta admit and I'm not, I'm, to be honest, I'm, I gotta admit I don't . . . is it a condition of the Rules of Probation that he sign up to do pre-work? I don't know. I just don't know that." Transcript at 18. Morris's counsel stipulated to the "probable cause" but stated, "when I tried to get into it, it just made it difficult to say he actually violated. I don't know. I'm not trying to be difficult." Id. at 19.

The trial court noted Morris's criminal history and behavior, revoked Morris's probation, and sentenced him to serve the remaining three years of his sentence in the Indiana Department of Correction.

I.

The first issue is whether the trial court denied Morris his procedural due process rights during his probation revocation proceeding. Morris appears to argue that: (A) he was never informed that he must attend the appointment as a condition of probation; and (B) the notice of probation violation did not set forth any conditions of probation that were violated.

A. Notice of Condition of Probation

In Morris's initial brief, he argues that "[t]he trial court's finding that [he] violated his probation . . . must be reversed because Morris was never informed of the condition of probation which he allegedly violated." Appellant's Brief at 13. In Morris's reply brief he argues, that "[w]ith respect to notice," one of the issues in the case is "whether Morris had notice that reporting to his electronic monitoring appointment was a condition of his probation for which a violation of probation could result." Appellant's Reply Brief at 4.

At the sentencing hearing, Morris was informed that he needed to sign up for home monitoring by 1:00 p.m. Further, the trial court's sentencing order stated, in part:

* * * * *

Court now sentences [Morris] to the Indiana Department of Correction for a period of three (3) years and said sentence is now suspended to supervised probation.

* * * * *

[Morris] is **ORDERED** released from custody to report to Ms. Montgomery to be placed on home detention/electronic monitoring immediately after his release from jail.

[Morris] is permitted to go at liberty upon the above terms and conditions.

Appellant's Appendix at 71. Based on the record, we conclude that the trial court informed Morris that he had to attend the appointment as a condition of probation. See Richeson v. State, 648 N.E.2d 384, 387 (Ind. Ct. App. 1995) (holding that the defendant was informed of the conditions of his probation).

B. Notice of Probation Violation

Morris argues that the notice of probation violation "did not set forth any conditions of probation which were violated and, in fact, did not refer to any specific conditions of probation." Appellant's Brief at 14. A defendant at a probation revocation hearing is not endowed with all the same rights he possessed prior to his conviction. Isaac v. State, 605 N.E.2d 144, 148 (Ind. 1992), cert. denied, 508 U.S. 922, 113 S. Ct. 2373 (1993). However, there are certain due process rights, of course, which inure to a probationer at a revocation hearing. Id. Among these rights is written notice of the claimed violations of probation that are sufficiently detailed to allow the probationer to prepare an adequate defense. Bovie v. State, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002).

Here, the State filed a notice of probation violation, which alleged:

That you have violated those terms of probation as follows:

On September 12, 2007, the Court ordered [Morris] released from the Knox County Jail and placed on Electronic Monitoring through the Knox County Probation Department Home Detention Program. [Morris] was given an appointment time of 1:00 p.m. on that same date. [Morris] failed said appointment and warrant was issued for his arrest.

Id. at 80. Based on the State's notice of probation violation, we conclude that Morris received written notice of the claimed violation of probation that was sufficiently detailed to allow Morris to prepare an adequate defense. See Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995) (holding that written notice of the claimed violations together with actual notice that the State was seeking revocation of probation satisfied the requirements of due process).

II.

The next issue is whether the evidence is sufficient to support the revocation of Morris's probation. Probation revocation is governed by Ind. Code § 35-38-2-3. A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999), reh'g denied. We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its

decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999).

The trial court informed Morris that he was to report for electronic monitoring immediately after his release from jail as a condition of probation. At the probation revocation hearing, Morris admitted that he knew that he needed to sign up by 1:00 p.m., that he failed to sign up by that time, and that he violated the trial court's order. We conclude the evidence is sufficient to support the revocation of Morris's probation. See Braxton, 651 N.E.2d at 271 (holding that the evidence was sufficient to support the trial court's revocation of probation); Seals v. State, 700 N.E.2d 1189, 1191 (Ind. Ct. App. 1998) (affirming revocation of probation where defendant failed to report to probation officer, a violation of oral condition of probation).

III.

The next issue is whether the trial court abused its discretion by imposing the remaining three years of Morris's suspended sentence due to his probation violation. We review a trial court's sentencing decision in probation revocation proceedings for an abuse of discretion. Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 730 N.E.2d 705, 708 (Ind. 2000), reh'g denied.

Ind. Code § 35-38-2-3(g) governs the revocation of probation and provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the 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 (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

We have held that “so long as the proper procedures have been followed in conducting a probation revocation hearing pursuant to Indiana Code Section 35-38-2-3, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” Goonen, 705 N.E.2d at 212. The “[c]onsideration and imposition of any alternatives to incarceration is a ‘matter of grace’ left to the discretion of the trial court.” Monday v. State, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996).

Morris does not dispute that the trial court was within its statutory authority to order that he serve three years of his suspended sentence. Rather, Morris argues that the recent changes he had made in his life, particularly his commitment to sobriety, suggest that Morris would be compliant with electronic monitoring.

In determining Morris's sentence for his probation violation, the trial court noted Morris's criminal history, which consisted of seven felony convictions and at least twelve misdemeanor convictions. The trial court commented on Morris's behavior by stating, “I can conclude nothing from [Morris's] behavior that convinced me he ever intended to turn himself in.” Transcript at 44. The trial court also noted that Morris failed to sign up for electronic monitoring and that Morris had testified that he did not go to work release

because it was a “haven for drugs.”¹ Id. at 45. Given Morris’s criminal history and behavior, we cannot say that the trial court abused its discretion by ordering him to serve his suspended sentence of three years in the Indiana Department of Correction. See, e.g., Sandlin v. State, 823 N.E.2d 1197, 1198 (Ind. 2005) (affirming the trial court’s decision to order the defendant to serve his entire four-year suspended sentence); Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion by ordering the defendant to serve her suspended sentence), trans. denied.

For the foregoing reasons, we affirm the trial court’s revocation of Morris’s probation.

Affirmed.

NAJAM, J. and DARDEN, J. concur

¹ At the revocation hearing, Morris stated that “if I would have went over to that Work Release Center, I would have got another D felony, because there’s so much meth over there in that Work Release Center, I know I would have slipped and I would go out there working and I would have ran into somebody and started drinking again.” Transcript at 26.