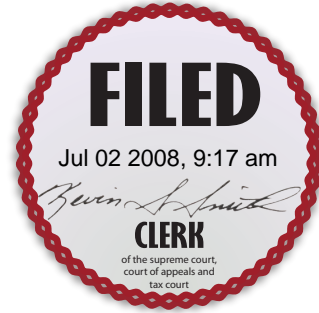


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL BENSON,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 48A02-0712-CR-1130

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-8505-CF-00048

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**July 2, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Michael Benson (“Benson”) appeals following the revocation of his probation and the imposition of the remainder of his previously suspended sentence. Benson raises one issue on appeal: whether the trial court abused its discretion when it determined that sufficient evidence existed that he violated the terms of his probation.

### **Facts and Procedural History**

In 1987, Benson was convicted and sentenced for Class A felony rape and criminal deviate conduct and Class B felony criminal confinement. He was subsequently sentenced to fifty years in the Department of Correction, followed by ten years on probation. As a term of his probation, he was to be evaluated by a treatment facility specializing in work with sexual offenders within thirty days of his release, and to “comply with the recommendations for treatment” given him “including inpatient if necessary.” Tr. p. 20.

In June of 2005, Benson was released from the Department of Correction. He began probation and subsequently asked for and received permission to transfer his probation to Ohio. While in Ohio, he was required to attend sex-offender counseling at the Southeast Community Health Center and successfully complete its treatment program. As part of his probation in Ohio, he was prohibited from possessing, among other things, sexually explicit material.

Benson admitted in writing before the Ohio Adult Parole Authority that he had violated his probation by possessing “sexually explicit material.” The Authority determined that Benson had failed to comply with the sex-offender treatment program and transported him back to Indiana for a determination regarding his probation.

On July 17, 2006, the State filed a petition to revoke Benson's probation. An evidentiary hearing was held on August 21, 2006. At the beginning of the hearing, Benson's attorney notified the trial court that Benson would admit to the probation violations. Benson subsequently admitted to the probation violations, and the trial court accepted that admission. Benson admitted to possession of pornography despite knowing that it would violate his treatment guidelines. Tr. p. 21. Following the hearing, the trial court revoked Benson's probation and ordered him to serve the balance of his suspended sentence in the Department of Correction. Benson appeals.

### **Discussion and Decision**

Benson argues that the trial court abused its discretion when it determined that sufficient evidence existed that he violated his probation. A probation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. Braxton v. State, 651 N.E.2d 268, 271 (Ind. 1995). When reviewing a claim of insufficient evidence to support a trial court's decision to revoke probation, we will not reweigh the evidence nor judge the credibility of witnesses. Id. We will consider all the evidence most favorable to the judgment of the trial court and, if there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation then we will affirm the decision to revoke probation. Id. We would note that proof of just one probation violation is sufficient to revoke a defendant's probation. Jones v. State, 689 N.E.2d 759, 761 (Ind. Ct. App. 1997). If an individual has violated a condition of probation at any time before the termination of the probationary period, the trial court may order execution of the sentence that was

suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(g)(3) (2004 & Supp. 2007).

Benson admitted that he violated the terms of his probation by failing to comply with the requirements of his sex-offender treatment program. In the original sentencing order, the trial court imposed the following condition of probation: Benson must receive a sex offender evaluation and comply with the treatment recommendations. Tr. p. 20. When Benson's probation was transferred to Ohio at his own request, he was required to attend sex-offender counseling and complete a treatment program. Tr. pp. 9, 11. The treatment program specifically required that he not possess pornography.

Benson admitted that he possessed sexually explicit material and knew that possession of such material violated the treatment program. Tr. p. 22, Ex. Vol. 1. Benson's admission is sufficient to support the trial's court finding that he violated his probation. Therefore, the trial court acted within its discretion in revoking his probation and ordering Benson to serve the balance of his remaining sentence.

Affirmed.

MAY, J., and VAIDIK, J., concur.