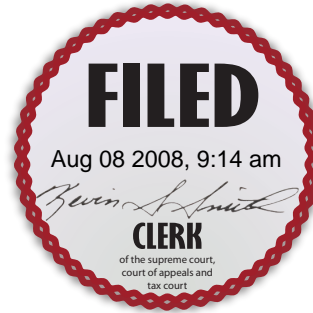


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TERRY BURKETT,)
)
Appellant-Defendant,)
)
vs.) No. 85A02-0803-CR-261
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert R. McCallen III, Judge
Cause No. 85C01-0501-FA-1

August 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Terry Burkett appeals the trial court's order revoking his probation. We affirm.

Issue

Burkett raises the sole issue of whether the trial court violated his due process rights by revoking his probation for conduct committed while he was in a community correction program.

Facts and Procedural History

Burkett pled guilty to Possession of Cocaine, as a Class C felony. On June 19, 2006, he was sentenced to a six-year term of imprisonment, with four years to be executed and two years suspended to probation. That day, in an "Order of Probation," he agreed in writing to abide by the law. Appendix at 39-40. He understood that violating any term of his probation would allow the trial court to "impose any sentence it may have originally imposed, including but not limited to, execution of any suspended sentence." Id. at 43. The first page of the Order of Probation contained blanks, apparently not filled in at the time, for "Duration of Probation:," "Prob. Term to Begin:," "Prob. Term to End:," "Sentence:," and "Name of Probation Officer:." Id. at 39.

In May 2007, Burkett petitioned to modify his sentence. The trial court granted the petition on July 2, 2007. In handwriting dated July 2, 2007, the Order of Probation indicated the name of the probation officer and that probation would run for three years and 319 days, from that date until May 17, 2011. The handwriting includes the note, "sentence modified from 6 yrs w/ 2 yrs susp on July 2, 2007." Id. The modification order stated that if Burkett

later became ineligible for community correction, the “Defendant shall serve the sentence imposed here at the Indiana Department of Correction.” Id. at 44.

An officer found marijuana in Burkett’s residence. At the State’s request, the trial court terminated his participation in the community correction program. The State also petitioned to revoke Burkett’s probation. After an evidentiary hearing, the trial court revoked his probation and ordered that “the Defendant shall serve an additional 18 months of the suspended sentence and probation shall then be terminated.” Id. at 48.

Burkett now appeals.

Discussion and Decision

Burkett argues that the trial court violated his due process rights by revoking his probation for conduct committed while in a community correction program.¹ Effectively, he challenges the trial court’s legal conclusion, making our review de novo. See Chism v. State, 807 N.E.2d 798, 801 (Ind. Ct. App. 2004).

The trial court may revoke probation if “the person has violated a condition of probation during the probationary period.” Ind. Code § 35-38-2-3(a)(1). “If the court finds that the person has violated a condition at any time before termination of the period,” the trial court may order execution of all or part of the previously suspended sentence. I.C. § 35-38-2-3(g)(3) (emphasis added).

The suspension of a sentence is a conditional liberty. Ashba v. State, 570 N.E.2d 937,

¹ On appeal, Burkett does not challenge the trial court’s finding that he possessed marijuana while participating in a community correction program. Nor does he dispute that such conduct was cause for terminating his participation in the program. Appellant’s Brief at 6.

940 (Ind. Ct. App. 1991), aff'd, 580 N.E.2d 244, 245 (Ind. 1991). It is a favor, not a right.

Id.

While at liberty on parole, should a defendant engage in unlawful activity, he thereby violates a condition of probation. At that point, the sentencing court has the authority to revoke probation that was previously given.

We hold that once Ashba engaged in unlawful activity, he violated the terms of his probation. Those terms attached to his suspended sentence from the moment the sentence was imposed.

The trial court did not err in considering the petition for probation revocation even though Ashba was on parole from the Department of Correction.

Id. (emphasis added). In reaching the same result, this Court reasoned that “placement in a community corrections program is akin to probation.” Gardner v. State, 678 N.E.2d 398, 400 (Ind. Ct. App. 1997). “Once a defendant has been sentenced, the court may revoke or modify probation, upon a proper showing of a violation, at any time before the completion of the probationary period.” Id. at 401. See also Rosa v. State, 832 N.E.2d 1119, 1122 (Ind. Ct. App. 2005) and Crump v. State, 740 N.E.2d 564, 568 (Ind. Ct. App. 2000), trans. denied. We decline Burkett’s invitation to “reconsider” Crump and this line of cases. See Appellant’s Brief at 6. The trial court did not violate Burkett’s due process rights by revoking his probation.

Affirmed.

RILEY, J., and BRADFORD, J., concur.