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.

ATTORNEY FOR APPELLANT:

THOMAS C. ALLEN
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MELLISICA K. FLIPPEN
Deputy Attorney General
Indianapolis, Indiana

FILED
Aug 17 2010, 9:24 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

BREONDON D. PINKSTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-1002-CR-146
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0810-FC-281

August 17, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Breondon Pinkston appeals the trial court's order revoking his probation. Specifically, Pinkston argues that his due process rights were violated because he was not properly notified regarding the allegations against him. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 29, 2008, Pinkston battered Antonesia James, who was pregnant with Pinkston's child. On August 1, 2008, Patricia Files, James's mother, obtained a protective order barring Pinkston from any contact with James.

On October 17, 2008, the State charged Pinkston with battery, a class C felony, strangulation, a class D felony, and battery, a class A misdemeanor. On May 13, 2009, Pinkston pleaded guilty to strangulation and misdemeanor battery. In exchange, the State dismissed the felony battery charge.

On June 11, 2009, the trial court sentenced Pinkston to three years for strangulation, with six months executed and two and one-half years suspended to probation, and to one year, fully suspended, for battery. The sentences were ordered to be served consecutively. Pinkston was given 112 days jail credit, and he began his probationary term on the same day.

One of the conditions of Pinkston's probation was that he "shall behave well and report for supervision as instructed." Appellant's App. p. 18. Additionally, when Pinkston was sentenced, the protective order, which was issued on August 1, 2008, remained in effect. In light of these circumstances, Pinkston's probation officer, Richard Dejournay, repeatedly advised him to stay away from James.

Beginning on June 12, 2009, the Communications Division of the Fort Wayne Police Department received nine emergency calls relating to incidents between Pinkston and James. As a result of one of these incidents, James required medical treatment.

On November 24, 2009, the State filed a second amended petition for revocation of probation[1], wherein it was alleged that Pinkston violated the terms of his probation by committing new offenses under six separate cause numbers.

An evidentiary hearing was held on January 21, 2010, in which all of the emergency calls were admitted without objection. In addition, Pinkston was identified as the perpetrator in all but one of the incidents, which involved threats that were made by Pinkston's mother.

The trial court concluded that Pinkston had violated the terms of his probation by failing to maintain good behavior. The trial court revoked Pinkston's probation and ordered him to serve the entire suspended sentence of three and one-half years. Pinkston now appeals.

DISCUSSION AND DECISION

Pinkston argues that he was denied due process when the trial court revoked his probation because the State's petition failed to properly notify him of the allegations against him. This court reviews a trial court's decision to revoke probation for an abuse of discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court. Prewitt v. State, 878 N.E.2d 184, 188 (Ind.

[1] The State filed its first Verified Petition for Revocation of Probation on October 16, 2009, and an Amended Petition for Revocation of Probation on November 12, 2009.

2007).

Although an individual at a probation revocation hearing does not possess the same rights that he possessed prior to conviction, due process does provide an individual with certain protections at a probation hearing. Bovie v. State, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002). Among those rights is written notice of the claimed violations of probation that is sufficiently detailed to allow the probationer to prepare an adequate defense. Id.

Here, Pinkston admits that he received written notice, but claims that it did not sufficiently advise him of the alleged misconduct. The State counters that Pinkston failed to object to his lack of notice at the probation revocation hearing.

Generally, an issue is waived and may not be raised on appeal if it is not objected to at trial. Tillberry v. Sate, 895 N.E.2d 411, 415 n.1 (Ind. Ct. App. 2008). Nevertheless, we may bypass an error that a party procedurally defaults when the error is plain or fundamental. Townsend v. State, 632 N.E.2d 727, 730 (Ind. 1994). To qualify as "'fundamental error,' the error must be a substantial blatant violation of basic principles rendering the trial unfair to the defendant." Id. Deprivation of due process is fundamental error. Goodwin v. State, 783 N.E.2d 686, 687 (Ind. 2003).

In the instant case, Pinkston received written notice of the petition to revoke probation, which disclosed the allegations against Pinkston and provided a case number for each incident referenced by the Fort Wayne Police Department. In addition, Pinkston was aware of the protective order and was advised by Dejournay to stay away from James numerous times. Therefore we find that Pinkston was provided sufficient notice

of the allegations against him to prepare a defense, and there was no fundamental error.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.