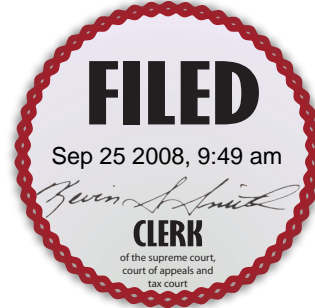


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD M. MURPHY,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A04-0803-CR-175

APPEAL FROM THE MADISON COUNTY COURT
The Honorable David W. Hopper, Judge
Cause No. 48E01-0607-FD-285

September 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Ronald M. Murphy appeals the trial court's revocation of his probation. He raises two issues, one of which we find dispositive and restate as whether the evidence is sufficient to support the revocation of his probation. We affirm.

The relevant facts follow. On July 19, 2006, Murphy was charged with performing sexual conduct in the presence of a minor as a class D felony. On February 2, 2007, Murphy pled guilty as charged and agreed to an eighteen month sentence suspended to probation. The trial court sentenced Murphy pursuant to the plea agreement.

On October 25, 2007, Murphy was arrested for criminal mischief. On October 29, 2007, the State filed a notice of violation of probation alleging that Murphy had violated the terms of his probation by: (a) committing the offense of criminal mischief; (b) failing to pay probation fees; (c) failing to report his arrest on October 25, 2007, to the probation department within 48 hours of the arrest; (d) failing to maintain employment and/or verify employment; and (e) violating "#12 sex offender term as set forth in the Pre-Sentence Investigation Report and as ordered in Sentencing Order of 3/12/07." Appellant's Appendix at 41. On November 26, 2007, the State amended the notice of violation of probation by alleging that Murphy also violated his probation by committing public indecency as a class A misdemeanor.

At a probation revocation hearing, Feleisa McCracken testified that she was walking in the parking lot of Kohl's Department Store in Anderson when a person drove his car very slowly next to her and had his "hand in between his legs and he was moving his hand . . . in an up and down motion." Transcript at 6. Anderson Police Officer Randy Doss testified that he was dispatched to Kohl's Department Store because Murphy was exposing himself in the parking lot. Officer Doss testified that the security tape from the department store clearly showed that Murphy had his penis in his hand. Doss Baker, the loss prevention manager at the department store, also testified regarding the video tape, which the trial court admitted.

The trial court also heard testimony regarding Murphy's arrest for criminal mischief. Sharon Adams, Murphy's probation officer, testified that Murphy failed to report his October 25, 2007 arrest. Sarah Denney testified that she saw Murphy, her ex-boyfriend, walking while she was driving her car. Denney stopped her car, and Murphy kept asking Denney why she did not want to "be with him." *Id.* at 23. Murphy "got mad," punched the taillight on Denney's vehicle, and ran. *Id.* Anderson Police Officer Matt Kopp testified that he made contact with Murphy and that Murphy had blood on his left hand. Anderson Police Officer Shirley Parks testified that a blood sample was taken from the broken taillight. Murphy objected to the State's failure to disclose copies of any records of the collection of the blood sample or any photographs of the taillight. Murphy moved to dismiss the part of the violation based on the criminal mischief or, alternatively,

to exclude “any evidence.” Id. at 35. The trial court denied Murphy’s motions, but granted a continuance to allow Murphy to examine the photographs.

On February 4, 2008, the trial court continued with the hearing wherein Murphy’s attorney told the trial court that “there’s been some kind of hang up with the photographs being provided,” but advised the trial court that he did not want to have the hearing continued again. Id. at 70. Murphy’s attorney asked the trial court to “take your decision under advisement until the end of this week. If it turns out that there is any information in the, uh, in the photographs that’s raised that means I need to present some defense evidence I can file something.” Id. at 71. Murphy did not subsequently file anything.

On February 12, 2008, the trial court found that Murphy had violated his probation because Murphy failed to: (1) behave well in society, having damaged another person’s property and having been arrested for criminal mischief; (2) behave well in society, having exposed his penis in a place where it was likely to be seen by other people and having been arrested for public indecency; (3) report both of his new arrests within 48 hours; (4) maintain employment; and (5) pay probation user fees in a timely manner. The trial court sentenced Murphy to serve eighteen months in the Indiana Department of Correction.

The dispositive issue is whether the evidence is sufficient to support the revocation of Murphy’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. 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). “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.” Cox, 706 N.E.2d at 551.

Murphy appears to argue that his criminal mischief arrest could not have been the basis for his probation revocation because the trial court should have sustained his objection to the admission of evidence. Murphy also argues that his failure to pay probation user fees in a timely manner was due to his loss of employment, which was only for a short period of time. Murphy does not challenge the trial court’s conclusions that he violated his probation because he “failed to behave well in society, having exposed his penis in a place where his genitals were likely to be seen by other people and having been arrested for Public Indecency” and “failed to report both of the new arrests within 48 hours.” Appellant’s Appendix at 72. Because violation of a single condition of probation is sufficient to revoke probation and there is substantial evidence of probative value to support the remaining unchallenged violations, we conclude that the trial court

did not abuse its discretion when it revoked Murphy's probation.¹ See Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995) (holding that there was sufficient evidence to revoke defendant's probation where there was probable cause to arrest defendant for a drive-by shooting), reh'g denied, trans. denied; see also Meniffee v. State, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992) (holding that the trial court could properly conclude that defendant committed domestic battery, resisted law enforcement, and caused property damage, and that any of these violations warranted revocation of probation), clarified on reh'g, 605 N.E.2d 1207.

For the foregoing reasons, we affirm the revocation of Murphy's probation.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur

¹ Murphy raises the issue of "[w]hether the trial court committed error in failing to sustain defense counsel's objection, during the probation violation evidentiary hearing, as to the State's failure to provide discovery." Appellant's Brief at 1. Murphy argues that the trial court "committed reversible error in failing to sustain defense counsel's objection to the testimony and evidence as to the broken taillight, which resulted in the new charge of criminal mischief." Id. at 9. Because we conclude that there are other violations of probation sufficient to support the revocation, we need not address Murphy's arguments regarding the violation for committing criminal mischief.