



In 2002, Appellant-Defendant James J. Pierce, Jr. pled guilty to several burglary charges and was sentenced to twenty years on each offense, with the sentences to run concurrently. Pierce also pled guilty to one count of escape and was sentenced to eight years on the offense, with the sentence to be served consecutive to his burglary sentences and suspended to probation. In 2008, the trial court granted Pierce's petition for modification and released him to probation for the balance of his sentence. In November of 2009, Pierce's probation officer filed a notice of violation of probation alleging that Pierce had committed new offenses, and on January 11, 2010, the court held an evidentiary hearing and revoked Pierce's probation.

Pierce appeals the revocation of probation, which is a two-step process requiring the trial court to make a factual determination that a violation of a condition of probation actually occurred and to make a determination of whether the violation warrants revocation. *See Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) (citing *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 2604, 33 L.Ed.2d 484 (1972)). Pierce contends he was denied due process at the revocation hearing because "the trial court skipped the second step of the process and Pierce was not allowed to present evidence that explains and mitigates his violation." Appellant's Br. at 9.

Here, Pierce argues that the trial court inquired as to whether Pierce had any witnesses with regard to the factual determination, but skipped the presentation of evidence regarding sanctions. The direct answer to Pierce's argument is that at the

conclusion of the state's evidence the trial court asked, "The defense have any witnesses?" Defense counsel responded, "No, your honor." Tr. at 52.

Pierce attempts to avoid this clear waiver by contending that there should have been a *separate* second step for the court to determine whether the violation warranted revocation. In this, he errs. In *Vernon v. State*, 903 N.E.2d 533, 537 (Ind. Ct. App. 2009), *trans. denied*, we held that where a defendant does not admit the alleged violation(s), a hearing is held to determine whether the violation is established. *Id.* At that hearing, the defendant is to be given the opportunity to present evidence on his behalf, which may dispute the violation and/or seek mitigation. *Id.* No *additional* hearing is contemplated or necessary.

At the evidentiary hearing, Pierce was given the opportunity to present whatever evidence he wished, and that opportunity satisfied the requirements of due process. He declined to present evidence and cannot now complain.

Affirmed.

ROBB, J., and BAILEY, J., concur.