

Joseph Hackler (Hackler) appeals from the trial court's order revoking his placement in community corrections. Hackler raises the following restated issue for our review: Did the trial court properly revoke Hackler's placement in community corrections when he represented himself *pro se* at the revocation hearing?

We affirm.

Hackler pleaded guilty to class A felony dealing in cocaine, class C felony possession of cocaine, class D felony dealing in marijuana, and class D felony possession of marijuana pursuant to a written plea agreement on November 19, 2002. That same day, the trial court sentenced Hackler to an aggregate sentence of twenty years in the Department of Correction.

On December 10, 2007, Hackler, *pro se*, moved the court for an alternative placement citing "Indiana Code Chapter 35-38-2.6 *et seq.*" *Appellant's Appendix* at 18. On May 13, 2008, the trial court granted Hackler's motion and ordered Hackler committed to H.O.C.C.S. Day Reporting Program. On April 19, 2009, H.O.C.C.S. filed a Notice of Violation of Hoch Correctional Consultants and Services-Day Reporting Program alleging that Hackler had committed the offense of resisting law enforcement, and that he had absconded from the program effective April 17, 2009. The trial court held a revocation hearing on March 18, 2010, at which the following dialogue occurred between Hackler and the trial court:

THE COURT: Sir your allegation is that you engaged in criminal behavior; resisting law enforcement arrest in Court 24, and you absconded from the Day Reporting program as of April 17th of 2009. Do you understand the nature of the allegations?

DEFT. HACKLER: Yes, sir.

THE COURT: Do you wish the assistance of an attorney to deal with these matters?

DEFT. HACKLER: I would like to, if I could, just get it over with today, sir.

THE COURT: Do you want a lawyer or not?

DEFT. HACKLER: No, sir.

THE COURT: Do you wish to admit or deny the violation?

DEFT. HACKLER: No, I don't, sir. I admit my violation.

THE COURT: You admit your violation?

DEFT. HACKLER: Yes. I won't deny it.

Transcript at 4. The trial court accepted Hackler's admissions and ordered Hackler to serve the remainder of his sentence, 770 days, in the Department of Correction. Hackler now appeals.

A probation revocation hearing is in the nature of a civil proceeding. As such, the alleged violation need be proven only by a preponderance of the evidence. Moreover, violation of a single condition of probation is sufficient to revoke probation. As with other sufficiency questions, we do not reweigh the evidence or judge the credibility of witnesses when reviewing a probation revocation. We look only to the evidence that supports the judgment and any reasonable inferences flowing therefrom. If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate.

Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001) (internal citations omitted).

For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. The similarities between the two dictate this approach. Both probation and community corrections programs serve as alternatives to commitment to the DOC and both are made at the sole discretion of the trial court. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a "matter of grace" and a "conditional liberty that is a favor, not a right."

Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999) (quoting *Million v. State*, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995)). After the hearing on the allegation of a violation of placement in community corrections, a trial court may change the terms of the placement, continue the placement, or revoke the placement and commit the person to serve the remainder of their sentence in the department of correction. Ind. Code Ann. § 35-38-2.6-5 (West, Westlaw through 2010 2nd Regular Sess.).

Hackler contends that he did not knowingly, intelligently, and voluntarily waive his constitutional right to counsel at his community corrections revocation hearing. Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution “a defendant in a community corrections program is entitled to representation by counsel” at a hearing before his placement in community corrections is revoked. *Cox v. State*, 706 N.E.2d at 550 . The trial court’s finding that a defendant waived his right to counsel is reviewed *de novo*. *Cooper v. State*, 900 N.E.2d 64 (Ind. Ct. App. 2009).

This court has recently stated the following regarding a defendant’s decision to proceed without the benefit of counsel:

The law is well settled that whenever a defendant proceeds without the benefit of counsel, the record must reflect that the right to counsel was voluntarily, knowingly, and intelligently waived. That is, the trial court must determine the defendant’s competency to represent himself and establish a record of the waiver. There are no magic words a judge must utter to ensure a defendant adequately appreciates the nature of the situation. Rather, determining if a defendant’s waiver was knowing and intelligent depends on the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused. . . .

Moreover, when a probationer proceeds pro se and chooses to admit rather than to challenge his alleged probation violation, his knowing, intelligent, and

voluntary waiver of counsel may be established even if the record does not show that he was warned of the pitfalls of self-representation.

Cooper v. State, 900 N.E.2d at 66-67. Furthermore, the State points out that we stated as follows about the warnings due a probationer who chooses to proceed *pro se* and to admit his violations:

We believe that a probationer who chooses to admit his probation violation places himself in a situation similar to that of a defendant who chooses to plead guilty to criminal charges. Neither person is in danger of “conviction” at the hands of the State. It is unnecessary to warn such a person of the pitfalls of self-representation, for those pitfalls exist only when he is confronted with prosecutorial activity which is designed to establish his culpability. *It is therefore clear that, when a probationer who proceeds pro se chooses to admit rather than to challenge his alleged probation violation, his knowing, intelligent, and voluntary waiver of counsel may be established even if the record does not show that he was warned of the pitfalls of self-representation.*

Greer v. State, 690 N.E.2d 1214, 1217 (Ind. Ct. App. 1998) (emphasis supplied).¹

The record here indicates that Hackler had experience with the criminal justice system, which is reflected by his criminal history consisting of several felony convictions. Hackler was unwavering when he indicated to the trial court that he wanted to “get it over with today.” *Transcript* at 4. Hackler unequivocally stated to the trial court that he did not want the representation of counsel. *Id.* Hackler’s background, familiarity with the criminal justice system and conduct were self-evident to the trial court. Thus, the absence of a warning of the pitfalls of proceeding *pro se* were not necessary to establish Hackler’s

¹ We acknowledge the Supreme Court’s decision in *Hopper v. State*, 2010 WL 3767296 (Ind. September 28, 2010) regarding the advisement about the danger of proceeding *pro se*. That case, however, addressed the subject in the context of trials and guilty plea hearings.

knowing, intelligent, and voluntarily waiver of his right to counsel in this probation revocation hearing.

Judgment affirmed.

CRONE, J., concurs.

BARNES, J., concurs in result in separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH HACKLER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-1004-CR-417
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

BARNES, Judge, concurring with separate opinion

Although I concur, I do so acknowledging our supreme court’s recent decision in Hopper v. State, No. 13S01-1007-PC-399 (Ind. Sept 28, 2010). In that case, our supreme court exercised its supervisory power to require that a defendant expressing a desire to proceed without counsel be advised of the danger of going to trial and “also be informed that an attorney is usually more experienced in plea negotiations and better able to identify and evaluate any potential defenses and evidentiary or procedural problems in the prosecution’s case.” Hopper, slip op. at 4. I fully recognize that Hopper applies prospectively. Nevertheless, I believe it is worth mentioning that future reliance on cases like Greer v. State, 690 N.E.2d 1214 (Ind. Ct. App. 1998), is drawn into question.

I also understand that Hooper involved a defendant’s guilty plea and the issue here is

the admission of a violation of the terms of Hackler's community corrections placement. For that reason, I fully concur in the majority's analysis of Hackler's familiarity with the criminal justice system and conclusion that his waiver of his right counsel was knowing, intelligent, and voluntary. I am troubled, however, by the State's argument that Hackler "merely faced a change in placement" and that the dangers of self representation in this context "are not substantial and are quite obvious" Appellant's Br. p. 8. Hackler was serving a twenty-year aggregate sentence for a Class A felony, a Class C felony, and two Class D felonies. Although Hackler had already served a significant portion of his sentence, in my opinion, the State is too cavalier in its description of the consequences facing Hackler. Someone facing the possibility of serving the remainder of a twenty-year sentence in the Department of Correction likely does not consider the results of the proceeding either "mere" or "insubstantial."

Despite these concerns, I concur.