



## Case Summary

Appellant-Defendant Robert Earl Gent appeals the revocation of his probation, alleging that there is insufficient evidence to support the determination that he violated his probation. We affirm.

### Facts and Procedural History

Pursuant to a plea agreement, Gent pled guilty in 2003 to Battery, as a Class C felony,<sup>1</sup> and Resisting Law Enforcement, as a Class A misdemeanor.<sup>2</sup> He was sentenced to eight years with seven years suspended for Battery and one year, suspended, for Resisting Law Enforcement. The trial court ordered Gent be placed on probation for eight years.

On January 26, 2008, Krystal Schenn drove to the apartment of Gent's son, Zachary. The apartment was in Van Wert, Ohio. Upon Zachary's request, Schenn drove Zachary to Decatur, Indiana, aiming to arrive at 6:15 p.m. at Gent's home. Schenn remained in her car while Zachary went to the door and was greeted by Gent. Schenn fell asleep as she waited and was awoken fifteen or thirty minutes later when Zachary returned to the car.

When they returned to Zachary's apartment, Schenn took a nap and awoke between nine and ten that evening. At that time, Zachary was upset and admitted that he had taken "fourteen plus four" methadone pills that Gent had given him. Probation Revocation Hearing Transcript at 15. Before she left the apartment, Schenn observed that Zachary was acting "weird," starting to pass out and talking to himself. *Id.* at 11. When Schenn returned early the next morning, she called 9-1-1 due to Zachary's condition. While waiting for the

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<sup>1</sup> Ind. Code § 35-42-2-1(3).

ambulance, Schenn spoke with Gent on Zachary's phone. Gent told Schenn not to tell the police that Zachary obtained the methadone from him. Zachary died at his apartment from the combined drug toxicity of methadone and hydrocodone.

While local police were investigating Zachary's death, police interviewed Gent. Gent commented that he had exchanged text-messages with Zachary the evening before but had since erased the messages. Based on this information, the police, pursuant to a warrant, obtained the text-messages recently sent between Zachary and Gent's phones. From the exchanged messages, the police discerned that Gent had agreed to trade twenty methadone pills for thirty vicodin (hydrocodone) from Zachary. Additionally, the messages indicated that Zachary planned to meet Gent for the exchange at 6:15 at Gent's home. Police also obtained evidence that Gent was lawfully prescribed 600 methadone tablets and 150 vicodin (hydrocodone) tablets per month. Both drugs are Schedule II controlled substances. See Ind. Code § 35-48-2-6.

Based on this evidence, the probation department filed a petition for revocation of probation, which was amended to allege that Gent had not maintained good behavior in that he committed the offense of Dealing in a Schedule I, II, or III Controlled Substance when he delivered methadone to Zachary in exchange for vicodin. Following a hearing on the petition, the trial court determined that Gent had violated the terms of his probation by delivering a schedule II controlled substance to Zachary, his son. The trial court then revoked Gent's probation and ordered him to serve the eight years of his suspended sentence.

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<sup>2</sup> Ind. Code § 35-44-3-3.

Gent now appeals.

## **Discussion and Decision**

### I. Standard of Review

Probation is a matter of grace, and it is within the trial court's discretion as to whether probation is granted. Gosha v. State, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). A probation revocation hearing is in the nature of a civil proceeding, and the alleged violation must be proven by a preponderance of the evidence. Ind. Code § 35-38-2-3(e); Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992). It is well settled that a violation of a single probation condition is sufficient to revoke an individual's probation. Gosha, 873 N.E.2d at 663. Where the State alleges criminal conduct as a probation violation, the trial court must find there is probable cause to believe the defendant violated the law. Pitman v. State, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001), trans. denied.

When reviewing the revocation of probation on a claim of insufficient evidence, this Court applies the same standard of review applied to all other sufficiency claims. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), trans. denied. We neither reweigh the evidence nor judge the credibility of the witnesses and examine only the evidence most favorable to the trial court's judgment and the reasonable inferences that may be drawn therefrom. Packer v. State, 777 N.E.2d 733, 740 (Ind. Ct. App. 2002). "If there is substantial evidence of probative value to support the trial court's finding that a probation violation occurred, then we must affirm the trial court's decision." Id.

## II. Analysis

Here, the State alleged that Gent violated his probation by committing the offense of Dealing in a Schedule II Controlled Substance. To support the allegation as charged, the State was required to prove by a preponderance of evidence that Gent knowingly or intentionally delivered methadone, a controlled substance classified in schedule II, to Zachary. See Ind. Code § 35-48-4-2. Gent only challenges whether the State had sufficient evidence to prove delivery, an actual or constructive transfer from one person to another of a controlled substance. See Ind. Code § 35-48-1-11. However, Gent's argument is essentially a request that we reweigh the evidence, which we will not do.

The State submitted the text-messages sent between the phones of Gent and Zachary, including those sent on January 26, 2008. After a text from Zachary to Gent indicating that Zachary had been in a fight, the following exchanges took place:

Gent	How u feeling? love u \nGOD BLESS!!
Zachary	im feeling good its not the first time ive been in a fight u wanna trade 30 vi for 20 done
Gent	Guess ur ok ! how many done u got left \nGOD BLESS!!
Zachary	3
Gent	They hold u today let u know prob willw love u \nGOD BLESS!!
Gent	What strength is ur vikes \nGOD BLESS!!
Zachary	500
. . . .	
Zachary	u wann trade me
Gent	Let u knowproably \nGOD BLESS!!
Zachary	well i kinda need to know asap
Gent	Why u hv 3 to hld u over \nGOD BLESS!!
Zachary	I wana do it because i have a headache and an eye that is twice its size im gona take more than one methata done soon
. . . .	

Zachary        how many u gona trade  
Gent            20 m for ur 30 v \nGOD BLESS!!  
.....  
Gent            I wil be hm by 6.15 love u \nGOD BLESS!!  
Zachary        C u there  
Gent (18:13 p.m.)    Hm home \nGOD BLESS!!  
Zachary        im in dec  
Gent            Frnt door \nGOD BLESS!!  
Gent (18:49 p.m.)    Why u leave like that \nGOD BLESS!!  
Zachary        Cus krystal is in a hary im sory im gona eat a done and pas out  
                  Love u  
Gent            DO NOT CUSE EM LOVE U \nGOD BLESS!!

State's Exhibit 2. Schenn testified that she drove Zachary to Gent's home in Decatur, Indiana, on January 26, 2008, with the goal of arriving at 6:15 p.m. She also testified that Zachary later informed her that Gent gave him methadone when he was at his father's home. Finally, when Schenn spoke with Gent after seeking medical help for Zachary, she said that Gent told her not to tell the police that Zachary had obtained the methadone from him. This evidence and the reasonable inferences that may be drawn therefrom are sufficient to support that Gent delivered the methadone to his son Zachary. Therefore, the trial court did not abuse its discretion in revoking his probation.

Affirmed.

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