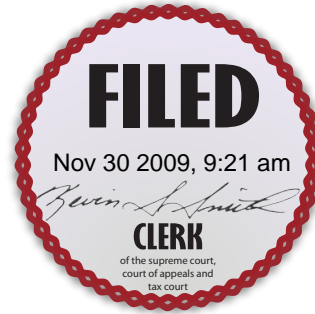


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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VANCE W. CARTER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 01A05-0906-CR-340

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APPEAL FROM THE ADAMS SUPERIOR COURT  
The Honorable Patrick R. Miller, Judge  
Cause No. 01D01-0408-FD-100

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**November 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Vance W. Carter appeals the trial court's revocation of his probation. We affirm.

### **Issue**

Is the evidence sufficient to support the trial court's decision to revoke Carter's probation?

### **Facts and Procedural History**

At approximately 3:00 a.m. on August 28, 2004, Decatur Police Department Officer Kriss S. Affolder was driving south on 13th Street when she noticed a vehicle in front of her cross the center line several times. She attempted to make a traffic stop, but the driver, later identified as Carter, sped away. After a short chase, officers cornered and arrested Carter. On August 30, 2004, the State charged Carter with class D felony resisting law enforcement, class A misdemeanor operating a vehicle while intoxicated endangering a person, class C misdemeanor operating a vehicle with a blood alcohol content ("BAC") of .08 or more, and class A misdemeanor driving while suspended. The State filed two notices to seek enhanced penalties based on prior convictions. Carter agreed to plead guilty to resisting law enforcement as a class D felony and operating a vehicle while intoxicated as a class D felony (enhanced from a class A misdemeanor due to a prior conviction) in exchange for the State's dismissal of the following charges: operating a vehicle with a .08 BAC as a class C misdemeanor, driving while suspended as a class A misdemeanor, driving left of center as a class C infraction, and speeding as a class C infraction.

On May 10, 2006, the trial court accepted the plea agreement and sentenced Carter to

three years for resisting law enforcement, with all but 180 days suspended to probation, plus a concurrent term of 180 days for operating a vehicle while intoxicated. The trial court ordered, among other things, that for the duration of his probationary term, Carter must: refrain from alcohol use; attend an alcohol counseling program; contact the program to request an evaluation within ten days of his initial meeting with his probation officer; pay administrative fees; and seek employment or remain employed unless permitted to do otherwise by his probation officer.

On June 6, 2006, Carter's probation officer filed a violation of probation petition alleging that when Carter had arrived at the jail to begin serving his sentence, he was under the influence of alcohol. At a hearing on the petition held on June 23, 2006, Carter admitted to the violation. The trial court modified Carter's probation, requiring an additional 180 days of incarceration to be served consecutive to his original sentence.

In November 2006, Carter's probation was transferred to Allen County, his county of residence. On January 25, 2007, the probation department referred him to Park Center, an alcohol treatment center. He contacted Park Center on January 29, 2007, and attended a financial appointment on January 30, 2007. He told the Park Center staff that he would contact them to schedule an evaluation appointment. He contacted them on March 22, 2007, and scheduled the evaluation for April 19, 2007. At the evaluation, Park Center recommended that Carter participate in a drug and alcohol services program, but he refused to begin treatment at that time, allegedly for financial and/or health insurance concerns. On May 30, 2007, Carter informed his probation officer that he was planning to begin substance

abuse treatment at another treatment center. On June 8, 2007, Carter's probation officer filed a violation of probation petition, citing Carter's failure to enroll in substance abuse counseling.

The trial court held a hearing on July 6, 2007, at which Carter denied the probation violation. The trial court set a status hearing for September 12, 2007, and ordered the probation officer to file a report within thirty days to inform the court of Carter's progress regarding counseling. On August 7, 2007, Carter's probation officer filed a report indicating that Carter had started a counseling program. At the status hearing on September 12, 2007, the trial court scheduled another status hearing for December 12, 2007. On December 4, 2007, the probation officer filed a report indicating that Carter had "satisfactorily completed" a substance abuse counseling program. Appellant's App. at 110-11. The trial court cancelled the status hearing and made an entry in the chronological case summary, stating in part: "Defendant has completed counseling as ordered." *Id.* at 12.

On November 6, 2008, Carter's probation officer filed a third petition of probation violation, this time alleging that Carter had failed to pay \$350 in fees required pursuant to his conditions of probation.<sup>1</sup> At the initial hearing on this petition, held November 21, 2008, Carter agreed to an extension of his probation to February 2, 2009 (it had originally been scheduled to terminate November 10, 2008). The trial court scheduled a hearing for that date but told Carter that he did not have to appear for the hearing and that his probation would be

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<sup>1</sup> The report states that Carter owed \$3305.00 in probation fees, but the parties agree that this was a typographical error and that the actual amount of arrearage is \$350.00 (\$330.00 in user fees plus \$20.00 for drug tests).

terminated immediately if he paid the overdue fees prior to February 2, 2009.

Carter did appear for the February 2, 2009 hearing, where he admitted to the trial court that he remained unemployed and that he had not paid any of the overdue probation fees. The trial court conducted an indigency hearing, granted Carter's request for court-appointed counsel, and set a fact-finding hearing for February 23, 2009. At that hearing, Carter's probation officer testified that Carter had failed to maintain employment, that he owed \$350.00 in probation fees, and that he had failed to complete substance abuse counseling in a timely manner. The trial court found that Carter had violated two terms of probation. At the revocation hearing, the court stated in relevant part as follows:

HAVING HEARD THE EVIDENCE AND THE TESTIMONY AND REVIEWING THE FILE, THE COURT FINDS THAT MR. CARTER DID IN FACT VIOLATE HIS PROBATION BY FAILING TO TIMELY COMMENCE HIS COURT ORDERED COUNSELING IN THIS MATTER. THE COURT ALSO FINDS THAT MR. CARTER DID IN FACT VIOLATE HIS PROBATION BY FAILING TO TIMELY COMMENCE HIS COURT ORDERED COUNSELING IN THIS MATTER. THE COURT ALSO FINDS THAT MR. CARTER VIOLATED HIS PROBATION BY FAILING TO PAY PROBATION USER FEES IN A ... KNOWINGLY OR RECKLESS MANNER. THE COURT DOES NOTE FOR THE RECORD THAT FROM THE TESTIMONY THAT WAS PRESENTED, THE ONLY TESTIMONY THAT WAS PRESENTED, HE WAS EMPLOYED THROUGH APRIL OF 2008. HE STOPPED PAYING ANY KIND OF FEES IN OCTOBER OF 2007. THERE WAS NO EXPLANATION GIVEN ALTHOUGH THE TESTIMONY WAS THAT THERE WAS [sic] NO DISABILITIES OR INFIRMITIES THAT PROBATION OFFICERS WERE MADE AWARE OF OR KNEW OF THAT WOULD INDICATE THERE WAS SOME REASON OR INABILITY TO PAY OTHERWISE.

Tr. at 93-94.

The trial court revoked Carter's probation and remanded him to the Adams County Law Enforcement Center to serve 364 days of his previously suspended sentence. On March

20, 2009, Carter filed a motion to correct error or in the alternative to modify sentence. The State filed its response on April 7, 2009. The trial court denied Carter's motion on April 15, 2009. Carter now appeals.

### **Discussion and Decision**

Carter claims that the evidence is insufficient to support the trial court's decision to revoke his probation. Our standard of review is well settled.

A probation revocation proceeding is in the nature of a civil proceeding, and, therefore, the alleged violation need be proved only by a preponderance of the evidence. Violation of a single condition of probation is sufficient to revoke probation. As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses. We look only to the evidence which 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.

*T.W. v. State*, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007) (citations omitted), *trans. denied*.

Carter contends that the petition alleging that he violated the substance abuse counseling condition of his probation was resolved when he completed the counseling and that therefore the trial court erred in finding a violation on this issue. The State argues that the counseling violation petition was never formally dismissed by the trial court and thus remained a valid basis for probation revocation. According to our review of the record, the counseling violation petition was filed on June 8, 2007, and after two status hearings, the trial court made an entry on December 5, 2007, that Carter had "completed counseling as ordered." Appellant's App. at 12. The trial court cancelled the final status hearing set for December 12, 2007, and set no further hearings on the matter. Neither the trial court nor the

State raised the issue again until fourteen months later at the probation revocation hearing, which had been set for the specific purpose of hearing facts regarding Carter's fee violation.<sup>2</sup> The counseling violation had long been resolved before the trial court, and, frankly, revoking Carter's probation for this violation made no sense and served no practical purpose. Therefore, we find that the trial court erred in finding that Carter violated his probation terms as to substance abuse counseling.

Having said that, however, we note that proof of a single violation is sufficient to justify the revocation of probation. *T.W.*, 864 N.E.2d at 364. Thus, if there is substantial evidence of a probative value to support the trial court's conclusion that Carter committed a fees violation, we will uphold the probation revocation. Carter notes that pursuant to Indiana Code Section 35-38-2-3(f), probation may not be revoked for failure to comply with financial obligations unless the probationer recklessly, knowingly, or intentionally fails to pay. Carter claims that his failure to pay was due to his unemployment and resulting financial straits and was therefore not reckless, knowing, or intentional.

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<sup>2</sup> On December 2, 2008, when the trial court scheduled the December 23, 2008, factfinding hearing, it stated in pertinent part:

The court's going to go ahead sir and set this matter for fact finding on this. You indicated yourself this is the last thing that's necessary to get this case over with. We're going to set this for a hearing. We're going to get some finality on it. Be aware sir that since your's [sic] is based strictly on payment of costs or fail, failure to pay costs that you can be violated for failure to pay costs, but if the court finds that it is unintentional, that you are not intentionally not paying, you cannot be incarcerated for your failure to pay. ... If the court would find that your intent, your, your failure to pay is intentional, that you've done something to cause this or you've chosen simply not to pay it, you could be incarcerated under that set of circumstances, otherwise, even if you are in violation, you potentially cannot be incarcerated.

Tr. at 68-69. Throughout the entire hearing on December 2, 2008, there was no mention of any petition other than the one alleging that Carter had failed to pay probation fees.

While Carter did attempt to explain his financial difficulties to the trial court at the revocation hearing, he did so only in a statement following the close of evidence, not in sworn testimony. As noted by the trial court, the only evidence offered regarding Carter's finances was his probation officer's testimony that he was employed through April 2008 and that he had stopped making probation fee payments in October 2007. Based on this evidence, the trial court found that Carter had recklessly, knowingly, or intentionally failed to pay the fees. In essence, Carter asks us to reweigh the evidence, which we cannot do.

In sum, the trial court did not abuse its discretion in revoking Carter's probation. There is substantial evidence of probative value to support the trial court's conclusion that Carter violated his probation by failing to pay probation fees, and this finding was sufficient to support the trial court's decision to revoke Carter's probation.

Affirmed.

May, J., concurs.

Brown, J., concurs in part, dissents in part with separate opinion.



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**IN THE  
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VANCE W. CARTER,	)	
	)	
Appellant-Defendant,	)	
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vs.	)	No. 01A05-0906-CR-340
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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**BROWN, Judge concurring in part and dissenting in part.**

I respectfully concur with the majority that the trial court erred in finding that Carter violated his probation terms as to substance abuse counseling. However, the revocation hearing is replete with references to Carter’s failure to complete counseling. I believe that this erroneous finding improperly influenced the Court’s decision to revoke probation, and I find insufficient evidence in the record to support the trial court’s finding that Carter recklessly, knowingly, or intentionally failed to pay the final \$350.00 of his total probation user fees.