

Garrison Lee Hood appeals the trial court's revocation of his probation. Hood raises one issue, which we restate as whether the evidence is sufficient to sustain the revocation of his probation. We affirm.

The relevant facts follow. In March 2007, Hood was convicted of public indecency as a class D felony, and the trial court sentenced him to eighteen months with twelve months suspended to probation. In February 2008, the probation department filed a notice of probation violation, alleging that Hood: (1) failed to obtain a substance abuse evaluation, comply with treatment recommendations, and provide written verification of successful completion of the program; (2) failed to participate in sex offender treatment, comply with all treatment recommendations, and provide written verification of compliance; (3) failed to pay probation fees; (4) failed to pay a felony administrative fee; and (5) failed to maintain employment and/or verify employment. In March 2008, the probation department filed an amended notice of probation violation, alleging that Hood had also violated the conditions of his probation by failing to abstain from the use of illicit drugs by: (1) submitting a urine sample on March 18, 2008 that tested positive for methamphetamine; and (2) admitting to his probation officer that he took a pill from his brother for pain and anxiety over the weekend of March 14, 2008 to March 16, 2008. In April 2008, the probation department filed a second amended notice of probation violation, alleging that Hood had also violated the conditions of his probation by committing the new offense of residential entry as a class D felony on April 15, 2008.

At the revocation hearing, Hood admitted that he was “behind on his fees” but denied the remaining allegations. Transcript at 4. Donald Allbaugh testified that Hood was assigned to him for sex offender treatment and that patients were allowed two unexcused absences. Allbaugh testified that Hood accumulated three unexcused absences and that, as a result, Allbaugh contacted Hood’s probation officer. After missing the meetings, Hood told Allbaugh that he did not attend the meetings because he could not afford the seven dollar fee. Hood was terminated from the counseling program due to his excessive absences, but he then resumed the counseling and attended regularly until his arrest for the new offense. Hood’s probation officer testified that Hood tested positive for methamphetamine and that Hood then admitted taking a pill from his brother for pain. However, the actual lab test was negative for methamphetamine. The State presented no evidence on the other allegations, including the residential entry arrest.¹

The trial court found Hood in violation of his probation for “failing to . . . participate continuously in the sex offender treatment, failure to pay probation and administrative fees, and for . . . taking some unknown pill from his brother, apparently prescription medication [and] [f]or failing to behave well, being arrested for a new offense.” Transcript at 17. The trial court ordered Hood to serve his previously suspended one-year sentence.

The issue is whether the evidence is sufficient to sustain the revocation of Hood’s probation. Probation revocation is governed by Ind. Code § 35-38-2-3. A probation

¹ Several of the State’s witnesses did not appear at the hearing.

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. 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. 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).

The trial court here found four violations, and Hood argues that the evidence was insufficient to revoke his probation on each of the four allegations. We will address each violation separately.

The trial court found that Hood violated his probation by being arrested for a new offense. A mere arrest of the defendant is insufficient to support a revocation of probation. Martin v. State, 813 N.E.2d 388, 390-91 (Ind. Ct. App. 2004). Rather, revocation is permitted if the trial court finds that the arrest was reasonable and that there is probable cause for belief that the defendant violated a criminal law. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), reh'g denied, trans. denied. Here, evidence was presented that Hood had been arrested for residential entry, but no other evidence concerning the alleged offense was presented. Hood's arrest, by itself, was insufficient to support a revocation of his probation.

The trial court also found that Hood had violated the conditions of his probation by “taking some unknown pill from his brother, apparently prescription medication.” Transcript at 17. After being confronted with a drug screen that was positive for methamphetamine, Hood admitted to his probation officer that he took a pill from his brother for pain. However, Hood did not admit that the pill was a prescription medication or an illicit drug, and the State presented no such evidence. In fact, the lab results of his drug test were negative for methamphetamine. We conclude that the State did not prove by a preponderance of the evidence that Hood violated the conditions of his probation on this basis.

Next, the trial court found that Hood violated the conditions of his probation by failing to pay probation and administrative fees. “Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.” Ind. Code § 35-38-2-3(f). The “failure to pay a probation user fee where the probationer has no ability to pay certainly cannot result in a probation revocation.” Woods v. State, 892 N.E.2d 637, 641 (Ind. 2008). Here, although Hood admitted that he was “behind on his fees,” the State presented no evidence that Hood’s failure to pay was reckless, knowing, or intentional. Transcript at 4. Thus, the trial court erred by finding that Hood violated the conditions of his probation on this basis.

Finally, the trial court also concluded that Hood violated the conditions of his probation by failing to participate continuously in sex offender treatment. The Indiana

Supreme Court has held that “probation may be revoked if the probationer does not regularly attend counseling sessions if ordered to do so.” Gilfillen v. State, 582 N.E.2d 821, 824 (Ind. 1991). The State presented evidence that Hood was required as a condition of probation to have a sex offender evaluation and “fully comply” with all recommendations. Appellant’s Appendix at 30. Hood attended sex offender group meetings and was allowed two unexcused absences. Hood accumulated three unexcused absences, and as a result, his counselor contacted Hood’s probation officer. Hood was terminated from the counseling program due to his excessive absences, but he later resumed the counseling and attended regularly until his arrest for the new offense. We conclude that, despite his resumption of the counseling, Hood violated his probation by accumulating three unexcused absences.² See, e.g., Lind v. State, 550 N.E.2d 823, 824 (Ind. Ct. App. 1990) (“The defendant’s failure to adhere to the program’s attendance policy shows a blatant disregard by the defendant for the trial court’s order to undergo counseling and treatment.”), trans. denied. Because the violation of a single condition of probation is sufficient to revoke probation, we conclude that the trial court properly revoked Hood’s probation.

For the foregoing reasons, we affirm the trial court’s revocation of Hood’s probation.

² Hood argues in his reply brief that he did not attend the counseling sessions because he could not afford the seven dollar fee. However, Hood did not inform his counselor of this issue until he had already accumulated three unexcused absences.

Affirmed.

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