

Appellant-respondent Matthew Bruno appeals the trial court's order revoking his probation, arguing that the evidence is insufficient to support the revocation. The State concedes that the evidence was insufficient, and we agree. Therefore, we reverse and remand for further proceedings.

On April 12, 2007, Bruno pleaded guilty to class C felony attempted robbery and was subsequently sentenced to four years imprisonment, with two years suspended to probation. Bruno was also ordered to pay a fine of \$100, a public defender fee of \$100, and courts costs of \$159. After Bruno completed the executed portion of his sentence, his probation began under the jurisdiction of Delaware County on April 18, 2007, but Elkhart County agreed to courtesy supervision because Bruno resided there at that time. At some point, Bruno was arrested for misdemeanor illegal consumption of alcohol and misdemeanor possession of marijuana. Thereafter, Elkhart County terminated the courtesy supervision of Bruno's probation.

On January 30, 2008, the State filed a petition to revoke Bruno's probation because he had failed to pay the public defender fee and court costs, he had been arrested twice, and Elkhart County had terminated its courtesy supervision. The trial court held a hearing on the revocation petition on April 24, 2008, and the dispositions of Bruno's arrests were unknown at that time. The trial court determined that Elkhart County had terminated its courtesy supervision because Bruno had violated the rules: "Obviously they, he's violated their rules. We know that he has now been arrested for criminal

offenses. There was or still is a warrant outstanding against him.^[1] That he is slated to appear in court in Elkhart County as, was alleged he hadn't paid his uh, his cost and fees." Tr. p. 23-24. The trial court then noted that the failure to pay fees was not a proper basis on which to revoke Bruno's probation: "And the Court obviously cannot imprison because of indigency." Id. at 24. Having determined that Bruno violated the terms of his probation with Elkhart County, the trial court declined to offer Bruno long-distance supervision in Delaware County. Thus, he was remanded back to the Department of Correction to serve the remaining two years of his sentence. Bruno now appeals.

A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995). 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 must affirm the revocation. Id.

Inasmuch as the failure to pay fees is an improper basis on which to revoke probation and there is no evidence supporting the trial court's statement that there was an outstanding arrest warrant that had been issued on Bruno, the only possibly valid basis on which Bruno's probation was revoked is his two misdemeanor arrests. As the State notes, however, "being arrested for a crime is insufficient to revoke a defendant's

¹ Evidently, Bruno failed to appear for a status hearing on January 14, 2008, in one of the proceedings for his misdemeanor arrests. The State acknowledges, however, that the record reveals that "the bench warrant order for [Bruno's] arrest was ordered but never issued. Bruno had entered a plea of not guilty on the pending charges in Elkhart County and had posted bond." Appellee's Br. p. 6. Therefore, this was not a valid basis on which to revoke Bruno's probation.

probation.” Gleason v. State, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994). Instead, “[t]here must either be proof at the revocation hearing that the defendant engaged in the alleged criminal conduct or proof of the conviction thereof.” Id. Such proof must include evidence that the arrests were reasonable and that there was probable cause to believe that the defendant had violated criminal laws. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001).

Here, at the time of the probation revocation hearing, Bruno had pleaded not guilty on the pending charges in Elkhart County and had posted bond. The trial court did not examine the factual circumstances underlying those arrests; indeed, the only witness who testified at the revocation hearing was a Delaware County probation officer with no personal knowledge of the Elkhart County circumstances. Thus, there is no basis in the record for a conclusion that the arrests were reasonable or that there is probable cause to believe that Bruno violated criminal laws. As the State concedes in its brief, “the revocation of courtesy supervision in Elkhart County along with his two misdemeanor arrests does not establish a sufficient basis to revoke Bruno’s probation.” Appellee’s Br. p. 6. The termination of courtesy supervision in Elkhart means that Delaware County must monitor Bruno’s probation from afar.

The judgment of the trial court is reversed and remanded for further proceedings consistent with this opinion.

NAJAM, J., and KIRSCH, J., concur.