

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Jonathan Leroy Jefferies,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 4, 2024

Court of Appeals Case No.
23A-CR-1795

Appeal from the Huntington Circuit Court
The Honorable Davin G. Smith, Judge

Trial Court Cause No.
35C01-2001-FA-12

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] Jonathan Leroy Jefferies appeals the trial court’s revocation of his probation. Jefferies admitted to violating his probation terms but contends the trial court denied him due process when it did not give him an opportunity to present mitigating evidence suggesting his probation should not be revoked. We agree, and therefore reverse and remand.

Facts and Procedural History

- [2] In late 2021, Jefferies pleaded guilty to two counts of child molesting as a Class C felony for acts committed between December 2013 and March 2014. The trial court sentenced him to concurrent eight-year terms on each count, with six years executed and two years suspended to probation. Jefferies served his term of imprisonment and was released to probation in August 2022.¹
- [3] In relevant part, the terms of Jefferies’ probation required him to (1) notify his probation officer within forty-eight hours of any change of address; (2) maintain or seek suitable employment; (3) complete a sex offender treatment program; and (4) have no contact with any person under the age of sixteen unless he received court approval or successfully completed a court-approved sex offender treatment program.

¹ Jefferies had served 595 days with good time credit prior to conviction and sentencing.

[4] On March 28, 2023, the State filed a petition to revoke Jefferies' probation. The State alleged Jefferies violated the four probationary terms because he was found in a home with a child less than sixteen years old, stayed at an address without informing probation, had yet to enroll in a sex offender treatment program, and was unemployed.

[5] On May 1, the trial court held an initial hearing. The parties informed the trial court they had reached an agreement under which Jefferies would admit to the violation in exchange for a delayed disposition of ninety days. The delayed disposition would allow Jefferies time to enroll in a sex offender treatment program and obtain new employment.² Jefferies testified to the factual basis of the probation violation, and the trial court accepted his admission. According to the parties' agreement, the trial court set the dispositional hearing for August 7.

[6] For reasons unclear from the record, the trial court held a status hearing on July 3.³ The trial court had not removed the August 7 hearing from the calendar. At the status hearing, Jefferies and his counsel informed the trial court (1) he had scheduled an enrollment appointment with the sex offender treatment program, but the program had rescheduled multiple times, (2) he had an upcoming

² Jefferies stated he had a job but had been fired.

³ On appeal, both parties state the trial court set the July 3 status hearing. The Chronological Case Summary ("CCS") indicates the July 3 hearing was scheduled on June 22, but does not state whether it was at a party's request or the trial court's initiative.

appointment on July 16, and (3) he was employed at a furniture company in Knox, Indiana. According to the prosecutor, the probation office had reported Jefferies had made only one call to enroll in treatment and his employment was terminated on June 9. The State then moved to proceed immediately to disposition based on Jefferies' treatment noncompliance and unemployment. Jefferies interjected, saying he could prove he was still working. Jefferies' counsel then objected, stating "I don't know what the miscommunication is" regarding his employment status, and asked to have until August 7 so Jefferies could enroll in treatment on July 16 and bring his paycheck stubs to court to prove employment. *Tr. Vol. 2* at 13.

[7] The trial court granted the State's motion. After hearing counsels' arguments, the trial court revoked Jefferies' probation and ordered the balance of his sentence executed, stating, "I don't think you're willing to do the things that you need to do." *Id.* at 16. After the trial court's pronouncement, the following exchange occurred:

[Jefferies]: But I do have a job. There was another guy (indiscernible) and I had a talk with the supervisor about cause they got it mixed up in the office.

The Court: Sir, you-

[Jefferies]: You can call- you can call- we can call my job right now.

The Court: -completed- we've completed your hearing now. You should've brought documentation with you if you believe that to be the case.

[Jefferies]: Well, I didn't think nothing of it because I thought because of August coming up.

Id. at 17. The hearing then ended. Four days later, the trial court cancelled the August 7 hearing. Jefferies now appeals.

The trial court denied Jefferies an opportunity to offer mitigating evidence suggesting his probation should not be revoked.

- [8] Jefferies argues the trial court denied him due process when it proceeded to disposition on July 3, thus denying him the opportunity to present evidence mitigating his violation.
- [9] Probation is a matter of grace left to the trial court's discretion, not a right to which a defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). In a probation revocation proceeding, probationers are not entitled to the full array of constitutional rights afforded defendants at trial. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). However, the Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation. *Id.* When a party claims his constitutional right to due process was violated, we review the claim *de novo*. See *Myers v. State*, 27 N.E.3d 1069, 1074 (Ind. 2015); *Moore v. State*, 102

N.E.3d 304, 308 (Ind. Ct. App. 2018) (“Whether a party was denied due process is a question of law that we review *de novo*.”).

[10] The minimum requirements of due process afforded to a probationer at a revocation hearing include: (a) written notice of the claimed probation violations; (b) disclosure of evidence against him; (c) an opportunity to be heard and present evidence; (d) the right to confront and cross-examine adverse witnesses; and (e) a neutral and detached hearing body. *Isaac v. State*, 605 N.E.2d 144, 148 (Ind. 1992) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)). To ensure probationers these due process rights, Indiana requires a trial court to hold an evidentiary hearing prior to probation revocation and provides the probationer the rights of confrontation, cross-examination, and representation by counsel. *See* I.C. §§ 35-38-2-3(d), (f) (2015).

[11] Probation revocation is a two-step process: first, the trial court must make a factual determination that the probationer violated a condition of probation; and second, the court must determine if the violation warrants revocation. *Woods*, 892 N.E.2d at 640 (citing *Morrissey*, 408 U.S. at 479–80). A person may admit to a probation violation and waive the right to a hearing, in which case the probationer waives certain procedural safeguards of *Morrissey* and statutory rights. *Id.*; I.C. § 35-38-2-3(e) (2015). Following an admission, the trial court then determines whether the violation warrants revocation. *Woods*, 892 N.E.2d at 640. “However, even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that

the violation does not warrant revocation.” *Id.*; see also *Vernon v. State*, 903 N.E.2d 533, 537 (Ind. Ct. App. 2009) (observing if a trial court proceeds straight to the second step, a probationer is entitled to present mitigating evidence suggesting a violation did not warrant revocation), *trans. denied*.

[12] Pursuant to an agreement with the State, Jefferies admitted to violating the terms of his probation at the May 1 hearing and the trial court accepted his admission. The parties expressly agreed to delay disposition for ninety days so Jefferies could comply with two of the violated probation terms: enroll in a sex offender treatment program and obtain employment. The parties agreed to, and the trial court set a hearing for August 7 to receive mitigating evidence. During the July 3 status hearing, the parties disputed Jefferies’ employment status and progress toward enrolling in treatment. Neither party called witnesses nor offered evidence, although Jefferies stated he would have brought evidence of employment had he known the July 3 hearing was dispositional. Under the parties’ agreement, which the trial court accepted, Jefferies had until August 7 to gather the mitigating evidence he was entitled to present at a dispositional hearing. By holding the dispositional hearing on July 3, the trial court denied Jefferies the opportunity to present evidence to show his violation did not warrant revocation. Thus, the trial court denied Jefferies due process.

[13] Nevertheless, the State argues Jefferies received due process because the trial court permitted Jefferies’ counsel to argue mitigating facts at the July 3 hearing. In support, the State cites *Sanders v. State*, in which the trial court held an evidentiary hearing on a petition to revoke probation at which the probationer

admitted to violating some but not all probation conditions. 825 N.E.2d 952, 954 (Ind. Ct. App. 2005), *trans. denied*. On appeal, this Court held the probationer received due process because in addition to hearing her counsel's argument, the trial court gave her an opportunity to present evidence and allowed her to make a statement before determining she had violated the probation terms and revocation was warranted. *Id.* at 956. Thus, *Sanders* does not support the State's proposition that argument of counsel alone is a sufficient substitute for an evidentiary hearing when a probationer admits to a probation violation. Arguments of counsel are not evidence. *See Gibson v. State*, 133 N.E.3d 673, 694 (Ind. 2019) (citing *Piatek v. Beale*, 999 N.E.2d 68, 69 (Ind. Ct. App. 2013), *trans. denied*).

[14] The State also argues Jefferies should have known to bring the proffered evidence of employment to court on July 3. However, according to the CCS, the trial court set the July 3 hearing as a status hearing, and the August 7 hearing remained on the court's calendar until July 7. The record clearly shows Jefferies and his counsel were caught off guard by the State's motion to convert the July 3 status hearing to a dispositional hearing after having previously agreed to an August 7 disposition. Jefferies' counsel objected to the State's motion, noting Jefferies was not prepared to present evidence that day and requesting until August 7 to gather evidence.

[15] Further, the State's argument Jefferies should have known to bring the evidence because "the trial court had the authority to proceed to disposition as soon as Jefferies admitted the violations" is the exact argument our Supreme Court

dispelled in *Woods*. *Appellee's Br.* at 11. As the *Woods* Court noted, “the very notion that violation of a probationary term will result in revocation no matter the reason is constitutionally suspect” and thus due process requires a probationer have an opportunity to explain why he violated the terms of probation. 892 N.E.2d at 641. Moreover, as the United States Supreme Court has held, due process provides a probationer “an opportunity to be heard *and to show*, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.” *Morrissey*, 408 U.S. at 488 (emphasis added). The trial court did not provide Jefferies with such an opportunity.

Conclusion

- [16] By denying Jefferies the opportunity to present the mitigating evidence suggesting his probation violation did not warrant revocation, the trial court denied Jefferies due process of law.
- [17] Reversed and remanded.

Altice, C.J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita

Indiana Attorney General

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana