

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.

ATTORNEY FOR APPELLANT:

**BRUCE N. ELLIOTT**  
Marion, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**NICOLE M. SCHUSTER**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

DAVID L. ALLEN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 27A05-0708-CR-422

---

APPEAL FROM THE GRANT SUPERIOR COURT  
The Honorable Jeffrey D. Todd, Judge  
Cause No. 27D01-9612-CF-97

---

**November 20, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

David L. Allen appeals the revocation of his probation. We affirm.

In December 1996, the State charged Allen with two counts of class A felony dealing in cocaine. The second count was amended to a class B felony. Allen agreed to plead guilty to the class B felony count in exchange for the dismissal of the class A felony count. Sentencing was left to the trial court's discretion. On November 3, 1997, the trial court sentenced Allen to fifteen years, with ten years executed and five years suspended to probation. Allen was released from incarceration after eight and one-half years and signed his conditions of probation on May 1, 2006.

On August 29, 2006, the State filed a petition to revoke Allen's probation, alleging that he had violated the conditions of his probation by being arrested for and charged with class C felony cocaine possession and class A felony cocaine dealing in Wayne County in June 2006. At a hearing on April 2, 2007, Allen agreed to admit to the probation violation and to allow the trial court to determine disposition. The trial court found that a factual basis existed for Allen's admission and allowed the prosecutor to present evidence regarding disposition. The prosecutor elicited testimony from Allen that his release from prison had been delayed because of "write-ups[.]" Tr. at 10. Over objection, the prosecutor established, and Allen acknowledged, that he had in fact been convicted of possession of class C felony possession of a dangerous device while in prison and that his release had been delayed as a result of the three-year sentence for that offense. At the conclusion of the hearing, the trial court executed four of the five suspended years of Allen's sentence.

On appeal, Allen argues that

the trial court violated his right to due process when it allowed the State to use evidence against him even though that evidence was not provided to Allen in response to his discovery request and the allegations used against him were not those that were alleged in the petition to revoke his probation.

Appellant's Br. at 5.

We have stated that “[p]robation revocation implicates a defendant’s liberty interest, which entitles him to some procedural due process. Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding.” *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) (citation omitted). “Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually has occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation.” *Id.* (citations omitted). “When a probationer admits to [a violation], the procedural due process safeguards and an evidentiary hearing are not necessary. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation.” *Id.* (citation omitted).

Here, Allen admitted to violating his probation based on the cocaine charges in Wayne County, and the trial court found that a factual basis existed to support that admission. Allen’s possession of a dangerous device conviction played no role in that determination. To the extent Allen claims that the trial court violated his due process rights in considering that conviction to determine whether the violation warranted revocation, we note that Allen concedes that he “could not have avoided testifying about his conviction if he had been asked

such a question by the State[.]” Appellant’s Br. at 8. As such, we find no grounds for reversal.

Affirmed.

DARDEN, J., and MAY, J., concur.