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**IN THE
COURT OF APPEALS OF INDIANA**

EUGENE PENN, JR.,)
)
Appellant-Defendant,)
)
vs.) No. 48A02-0505-CR-397
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-8712-CF-170
48D03-9403-CF-51

OCTOBER 23, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Eugene Penn, Jr. appeals the revocation of his probation.

We affirm.

Penn raises two issues for our review, which we restate as:

- I. Whether the trial court complied with due process requirements in revoking Penn's probation.
- II. Whether there was sufficient evidence to support the court's determination of a violation of probation.

Christopher Bryan and Dewitt Epperly rented neighboring apartments from Harlon Groover. On December 31, 2004, Epperly was not at home because he was incarcerated. On that night, Bryan returned to his apartment to find Penn sitting on the front porch. Penn told Bryan that he had permission from Epperly to be there. Bryan invited Penn into his apartment, and the men began drinking beer. At some point, Penn asked Bryan if he wanted to buy a fax machine. Bryan declined but a friend of Bryan's went into Epperly's apartment with Penn to look at the machine. Later, Penn used the cell phone of Bryan's friend to make a call. Penn was arguing with someone on the phone and threatened to drive Epperly's truck through the person's house. When Penn finished the call, he asked Bryan if Epperly's truck was operational. He then stated that he was going over to Epperly's apartment to find the keys to the truck. Bryan and his friend stayed in Bryan's apartment, but they heard someone attempting to start Epperly's truck. The truck would not start, and Penn returned to Bryan's apartment. Later that night, Groover received a phone call that one of his apartments had been burglarized. When Groover arrived at the apartments, he observed that the rear door of Epperly's apartment had been

kicked in and the lock was broken. He went to Bryan's apartment where he found Bryan and Penn. Penn had a can of beer in his hand, smelled strongly of alcohol, and was staggering as he left the apartment when Groover arrived. Penn ran from the apartment and was later apprehended in a wooded area of Elwood. Based upon this incident, the State filed two notices of violation.

This case involves two lower court cases. In Cause number 48D03-9403-CF-51, a notice of violation of suspended sentence was filed on January 5, 2005. On January 21, 2005, a notice of violation of probation was filed in cause number 48D03-8712-CF-170. The trial court heard evidence at a revocation hearing that was held on February 23, 2005 and March 2, 2005. At the close of the evidence, the court determined that Penn had violated both his probation and his suspended sentence and ordered him to serve the remainder of his sentences.

Penn first contends that the trial court failed to comply with due process requirements by failing to state, in writing, the reasons and evidence relied upon for revoking his probation. Due process requires a written statement by the fact-finder setting forth the evidence relied upon and the reasons for revoking probation. *Wilson v. State*, 708 N.E.2d 32, 33 (Ind. Ct. App. 1999). However, an oral statement by the fact-finder that contains the facts relied upon and the reasons for revocation and is reduced to writing in the transcript of the hearing is sufficient to fulfill this requirement. *Id.*

Here, at the end of the evidentiary hearing, the trial court stated:

Let the record show the court finds the defendant violated the conditions of his probation and that he committed burglary and theft, attempted theft. I

don't know if we had any evidence on probation fees, did we? Did we have any evidence on that last time?

Okay. Arrears on probation fees.

Tr. at 50. The court's oral statement at the conclusion of the evidentiary hearing, which was reduced to writing in the transcript of the hearing, clearly evinces its reasons for the revocation, and the transcript of the hearing contains the evidence it relied upon in revoking Penn's probation. Thus, the writing requirement was satisfied, and Penn's due process rights were not violated. *See Mumford v. State*, 651 N.E.2d 1176 (Ind. Ct. App. 1995), *trans. denied* (holding that requirement of written findings of reasons for revoking probation was satisfied where trial court made oral statement of reasons at probation revocation hearing, which was thereafter reduced to writing in the transcript of the hearing); *see also Hubbard v. State*, 683 N.E.2d 618 (Ind. Ct. App. 1997) (written reasons given by trial court in order revoking probation, when coupled with evidence in transcript of evidentiary hearing, were sufficient to satisfy due process requirement of written statement of reasons for revocation and evidence relied upon).

As his second assertion of error, Penn argues that the State failed to present evidence sufficient to show that he committed a violation of his probation. Probation is an alternative to imprisonment and is granted in the sole discretion of the trial court. *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), *trans denied*, 753 N.E.2d 12. Accordingly, a defendant is not entitled to serve a sentence on probation; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a right. *Id.* Thus, a revocation hearing is in the nature of a civil proceeding, and the State must prove

an alleged violation only by a preponderance of the evidence. Ind. Code § 35-38-2-3(e); *Kincaid v. State*, 736 N.E.2d 1257, 1259 (Ind. Ct. App. 2000), *reh'g denied*. The decision to revoke a defendant's probation is a matter within the sound discretion of the trial court. *C.S. v. State*, 735 N.E.2d 273, 276 (Ind. Ct. App. 2000), *trans. denied*. Further, a probation revocation hearing involves a more narrow inquiry than other criminal proceedings, and its procedures are to be more flexible. *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999), *reh'g denied*. This is necessary in order to permit the court to exercise its inherent power to enforce obedience to its lawful orders. *Id.*

As with other sufficiency questions, we neither reweigh the evidence nor judge the credibility of witnesses when reviewing a probation revocation. *Baxter v. State*, 774 N.E.2d 1037, 1044 (Ind. Ct. App. 2002), *trans. denied*. We look only to the evidence that supports the judgment and any reasonable inferences flowing therefrom. If there is substantial evidence of probative value to support the trial court's determination that the probationer committed a violation, revocation of probation is appropriate. *Id.*

The State alleged, and the trial court found, that Penn had violated his probation by committing burglary and theft and failure to pay probation fees. In relevant part, the burglary statute provides: "A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary" Ind. Code § 35-43-2-1. Penn claims that the State failed to show that he intended to commit a felony when he entered Epperly's apartment.

Intent to commit a felony may be inferred from the circumstantial evidence of the nature of the crime. *Gentry v. State*, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005). For

example, this intent may be inferred from a defendant's subsequent conduct inside the premises. *Id.* Intent may not be inferred solely from proof of breaking and entering; however, the intent element is satisfied as long as there is a solid basis for a reasonable inference that the defendant had the intent to commit a felony inside. *Id.*

In the present case, the evidence shows that Bryan came home to find Penn sitting on the front porch stating he had permission from Epperly to be there. Later, Bryan, Penn, and Bryan's friend were drinking in Bryan's apartment, and Penn offered to sell Bryan and his friend a fax machine. Penn told them the machine was over in Epperly's apartment. The three of them went over to Epperly's apartment, but only Penn and Bryan's friend went into the apartment to look at the fax machine. Bryan noticed that the back door of Epperly's apartment had been kicked in. Epperly testified that Penn was an acquaintance of his from the local bar and that Penn had been to his apartment on a few occasions; however, Penn did not have permission to enter his apartment on the night of December 31, 2004. When Groover arrived to investigate the report of a burglary, the fax machine was missing from Epperly's apartment.

From these facts, the trial court could have reasonably inferred that at the time Penn broke and entered Epperly's apartment, he had the intent to commit a felony therein (i.e., theft). The evidence is sufficient to show by a preponderance of the evidence that Epperly committed burglary in violation of his probation. We conclude our analysis here because violation of a single condition of probation is sufficient to revoke probation. *Baxter*, 774 N.E.2d at 1044.

Based upon the foregoing discussion and authorities, we conclude that Penn's due process rights were not violated and that there was sufficient evidence to support the court's determination of a violation of probation by Penn.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.