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IN THE
COURT OF APPEALS OF INDIANA

BRUCE JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0604-CR-211
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
Cause No. 49G20-0210-FB-253995

November 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Bruce Jones appeals the trial court's revocation of his probation. He raises a single issue for our review, namely, whether the trial court erred in revoking Jones's probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On November 28, 2005, the probation department filed a notice of probation violation against Jones, alleging, among other things, that he had failed a drug screen on November 15, 2005. On January 12, 2006, Jones admitted that he failed the drug screen. As a result, the trial court placed him on "strict compliance" and scheduled a follow-up hearing for March 16, 2006.

On February 3, 2006, the probation department filed another notice of probation violation against Jones, alleging that Jones had tested positive for cocaine use on January 17, 2006. At the March 16 hearing, the following exchange took place:

> THE COURT: [H]e dropped dirty, is that right?
>
> MR. STERN [Jones's trial counsel]: We're disputing that.
>
> * * *
>
> THE COURT: Okay. Talk to me why you don't think he didn't test positive on January 15th.
>
> * * *
>
> MR. STERN: He's disputing . . . the drugs [after the January 12th hearing]. And . . . it appears that all of the other tests have been clean. Except—I say one is diluted—my problem is that they don't have a chemist. . . . I guess they must have changed the laws that you—you don't need to [bring] a chemist; they can just testify from hearsay that they believe that he tested

positive. And they can use hearsay and the probation [officers] can tell when he tested and when he didn't test. And what the results were.

THE COURT: Because we've got a certified report. That's been the law for a long time. Now, here's the question. The question is, as you—I want to make sure that I understand this. We were here on January the 12th. They put him on strict compliance. He got tested on January the 17th and he allegedly tested dirty. Your assertion on that was that if he did, it was a carry over from a prior use. Is that what you are telling me?

MR. STERN: Yes.

THE COURT: And has he had any tests since then?

[THE STATE]: He tested dilute [on] January 30th. And he tested clean on—he had three clean urine screens in February after that dilute test in January.

MR. STERN: Looks like he had four.

THE COURT: Okay.

MR. STERN: He is saying that he is clean today. He's . . . called me five, six times a day. He's got two jobs and we are trying to keep him out of jail, Judge. And I know that—

THE COURT: I'm trying to keep him from doing cocaine . . . .

MR. STERN: I understand.

THE COURT: I'm not being very successful. . . .

JONES: I was just sayin', you know, I have a problem. And I been—I even been going to meetings on my own. I went to the Alpha Resource Center, you know. And then the day I came to court, I think it was on the tenth, on that Thursday, I went to see her on that Friday. I took a test that Monday which was—which wasn't seven days later, sir. I took a test on that Monday.

THE COURT: That's fine. The 17th, I don't know what day of the week that is, but I can tell you that cocaine metabolizes through your system in a little less than that.

JONES: You know . . . I been really tryin' . . . .

THE COURT: Okay, let's have him tested today. If he tests clean we are going to continue on. If he tests dirty for anything or diluted he's going to go to jail. That's what we are going to do.

MR. STERN: That's—we appreciate that, Your Honor. Thank you very much. Do you want me to take him over there right now?

THE COURT: No, I'll have somebody do it.

* * *

HEARING RECESSED:

HEARING RECONVENED:

BAILIFF: Your Honor, the results are in the file.

THE COURT: Okay. As you can see, he tested positive again. So . . . we lost the lottery on that one. . . . I'm going to show that he's got ten years Department of Corrections [sic] with no days credit.

* * *

MR. STERN: He would like to—he would like to ask if he could get in some kind of program other than the Department of Correction?

THE COURT: No.

Transcript at 6-13. This appeal ensued.

DISCUSSION AND DECISION

Jones contends that the trial court erred when it admitted the results of the March 16 drug screen. Specifically, Jones argues that the trial court erred because there was no "sworn testimony . . . presented at any time during the hearing, the test results were not offered and admitted into evidence, there is no indication [of] what sort of machine or method was used to conduct the test or who was involved in it, and the test results contained no certification." Appellant's Brief at 5. The State responds by arguing that

Jones invited any such errors and that, regardless, he waived his appeal on those issues by not objecting. We agree with the State.

Jones's argument on appeal is not subject to appellate review because Jones invited any error relating to the March 16 drug test and the trial court's use of that test's results. See Pinkton v. State, 786 N.E.2d 796, 798 (Ind. Ct. App. 2003), trans. denied. "It is well settled in Indiana that a party may not invite error, and later argue that such error supports reversal because error invited by the complaining party is not reversible error." Id. "By eliciting the evidence which he now challenges, [the defendant] invited the very error he now [appeals from]." Kingery v. State, 659 N.E.2d 490, 494 (Ind. 1995). Where a party agrees to the introduction of evidence and helps the trial court obtain that evidence, invited error may be found. See Hulfachor v. State, 813 N.E.2d 1204, 1207 (Ind. Ct. App. 2005).

Here, Jones elicited the evidence he now challenges, he agreed to the introduction of that evidence, and his trial counsel offered to help the trial court obtain that evidence. Jones argued to the trial court that the January 17 drug test erroneously detected residual drugs found in an earlier drug test, and that he was "clean today." Transcript at 10. In response, the trial court offered to test Jones on the spot in lieu of its consideration of the January 17 drug test. Jones did not object[1] to the trial court's suggestion, nor did Jones give any indication that he was opposed to the trial court's offer. Rather, Jones readily agreed to the test. Indeed, Jones's trial counsel stated, "we appreciate that, Your Honor.

[1] Even if Jones's argument was subject to appellate review, it seems that Jones has waived his argument by failing to raise an objection before the trial court either when the trial court offered the substitute test or when the trial court considered that test's results. See e.g., Burnett v. State, 815 N.E.2d 201, 207 (Ind. Ct. App. 2004).

Thank you very much." Id. at 12. Jones's attorney then offered to assist in the collection of the evidence by escorting Jones to the testing site, an offer the trial court declined. And when the court reconvened, Jones made no objection to the admission of the test's results. Accordingly, Jones is entitled to no relief.

Affirmed.

MATHIAS, J., and MAY, J., concur.