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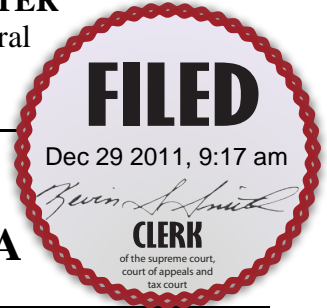
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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT STRICKLAND,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 67A01-1106-CR-283

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0805-FC-148

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Robert Strickland pleaded guilty to child molesting and was sentenced to seven years in the Department of Correction with three years executed and four years suspended to probation. In June 2011 Strickland's probation was revoked and the trial court reinstated the remainder of his original sentence. Strickland raises one issue for our review, which we restate as whether the evidence was sufficient to determine Strickland violated the terms of his probation. Concluding the evidence was not sufficient, we reverse the trial court's judgment and remand for the trial court to reinstate Strickland's probation.

Facts and Procedural History

Strickland pleaded guilty to child molesting, a Class C felony, in April 2009. The trial court sentenced Strickland to seven years in the Department of Correction, with three years executed and four years suspended to probation. The terms of Strickland's probation included: "You shall have no contact with anyone under 18" and "[y]ou shall have no contact with any person under the age of 16 unless you receive court approval or successfully complete a court-approved sex offender treatment program, pursuant to IC 35-38-2-2.4. Contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties." Appellant's Appendix at 18, 22.

In August 2010, the probation department filed a petition to revoke Strickland's probation because Strickland was living with his mother, who was living with a family that had a fourteen-year-old daughter. Strickland admitted to the living arrangement and was sentenced to time served and released to probation with the same relevant terms and

conditions as his previous probation. Strickland moved to a new residence, but his mother remained in the family's home.

In March 2011, the probation department filed a second petition to revoke Strickland's probation, alleging he had violated the terms of his probation by being in the same family's home with the same fourteen-year-old girl. Strickland denied the allegation, and a factfinding hearing was held. Teresa Parrish, the probation officer in charge of supervising Strickland's probation, testified. She stated she conducted a home visit "due to several phone calls that I had been getting that [Strickland] . . . had been visiting a home with the child there of the age of fourteen years of age." Transcript at 4. Parrish stated Strickland's mother was living there, but he was not. After arriving at the home, Parrish knocked and Strickland's mother answered. His mother said he was not there, and Parrish replied that an officer was going to come and walk through the residence.

While waiting outside the residence, Parrish observed Strickland walk out the back of the home. Parrish yelled at him to come back, and Strickland "admitted to me that he had been in the house. He said that he had not been there very long but he had been there when the girl was there." *Id.* at 6. The trial court found Strickland violated the terms of his probation by having contact with a fourteen-year-old girl and revoked his probation. Strickland now appeals.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a revocation of probation, we consider only the evidence most favorable to the judgment without

reweighing the evidence or judging witnesses' credibility. Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008). A probation revocation hearing is civil in nature, and the State's burden is to prove the alleged violations by a preponderance of the evidence. Mogg v. State, 918 N.E.2d 750, 759 (Ind. Ct. App. 2009). 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 will affirm its decision to revoke probation. Id. (citation and quotation omitted).

II. Strickland's Probation Revocation

Strickland argues the State failed to present sufficient evidence to support revoking his probation because the evidence presented shows merely that he was in the presence of a fourteen-year-old child, at most. In support of his contention, Strickland relies on Hunter v. State, 883 N.E.2d 1161 (Ind. 2008), where our supreme court addressed a factual scenario almost identical to this case. The relevant portion of the probation condition in Hunter stated: "The defendant must never be alone with or have contact with any person under the age of 18. Contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties." Id. at 1162. Hunter's probation officer filed a petition to revoke Hunter's probation after discovering that he had been remodeling his half-sister's bathroom in the afternoons and would occasionally still be there when her children, ages 14 to 18, arrived home from school. Id. Hunter testified that "as soon as [the children] came in [the home], as fast as I could, I would pack up my tools and get out the door until the next day." Id.

Hunter argued on appeal that the State provided insufficient evidence to prove that he violated probation because there was no evidence that he had "contact" with the

children. Id. at 1163. Hunter argued “contact” should be interpreted as interaction, while the State argued that being in the presence of children under the age of eighteen equated to “contact.” Id. Our supreme court concluded the word “contact” requires more than mere presence alone and determined the evidence was insufficient to establish that Hunter’s conduct constituted a violation of the conditions of his probation. Id. at 1164.

Here, Strickland’s actions as depicted by the evidence were even further removed from constituting “contact” than the actions in Hunter. In Hunter, the evidence revealed that Hunter was in the presence of children by being in the same home as them on multiple occasions. Here, the evidence most favorable to the judgment of the trial court revealed one instance where Strickland was inside a home at the same time as a fourteen-year-old girl, but nothing more. There was no evidence that they had physical contact, communicated with each other, or were even in the same room at the same time. We therefore conclude that the evidence was insufficient to establish Strickland’s conduct constituted a violation of his terms of probation.

Conclusion

The evidence presented was insufficient to establish that Strickland violated his probation by having “contact” with a child. Thus, the judgment of the trial court is reversed and we remand to the trial court to reinstate Strickland’s probation consistent with this opinion.

Reversed and remanded.

NAJAM, J., and VAIDIK, J., concur.