

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellee,	)		
	)	Case No. 20051061-CA	
v.	)		
	)	F I L E D	
Danny Wilson Briggs,	)	(March 15, 2007)	
	)		
Defendant and Appellant.	)	<table border="1"><tr><td>2007 UT App 83</td></tr></table>	2007 UT App 83
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Seventh District, Monticello Department, 041700048  
The Honorable Lyle R. Anderson

Attorneys: William L. Schultz, Moab, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Bench, Davis, and McHugh.

McHUGH, Judge:

Defendant Danny Wilson Briggs appeals the trial court's order revoking his probation. Briggs pleaded guilty to driving under the influence of alcohol or drugs (DUI), with two or more prior DUI convictions, a third degree felony. See Utah Code Ann. § 41-6-44(3)(b) (2004). Briggs was sentenced to the Utah State Prison for a term not to exceed five years and fined \$1505. The trial court suspended the sentence and placed Briggs on probation. As a condition of his probation, Briggs was required to complete an inpatient treatment program for alcohol addiction. After Briggs was ejected from the Red Pine Residential Treatment Program (the Center), the trial court revoked Briggs's probation and ordered the previously imposed sentence executed. Briggs appeals and argues that the record does not support the trial court's conclusion that Briggs violated the terms of his probation because the evidence does not show his violation was "willful." See State v. Hodges, 798 P.2d 270, 276 (Utah Ct. App. 1990).

Utah Code section 77-18-1(12)(e)(ii) provides that "[u]pon a finding that the defendant violated the conditions of probation, the court may order the probation revoked." Utah Code Ann. § 77-

18-1(12)(e)(ii) (Supp. 2006). If after balancing the evidence, a trial court determines that more likely than not the probationer violated a condition of probation, the trial court has discretion to revoke probation. See State v. Maestas, 2000 UT App 22, ¶12, 23, 997 P.2d 314.

Briggs argues that there was insufficient evidence to support the revocation of his probation. Furthermore, Briggs argues that he is entitled to the benefits of probation as long as he "keeps faith" with the court. See State v. Bonza, 106 Utah 553, 150 P.2d 970, 972 (1944) (citing State v. Zolantakis, 70 Utah 269, 259 P. 1044 (1927)). "[K]eeping faith necessarily means that, in order to revoke probation, a violation of a probation condition must, as a general rule, be willful." Hodges, 798 P.2d at 276; see also id. at 277 ("[T]he [probation] violation must be willful or, if not willful, must presently threaten the safety of society." (citing Bearden v. Georgia, 461 U.S. 660 (1983))).

For Briggs to successfully challenge the trial court's order revoking his probation, he "must show that the evidence of a probation violation, viewed in a light most favorable to the trial court's findings, is so deficient that the trial court abused its discretion." State v. Jameson, 800 P.2d 798, 804 (Utah 1990). A trial court's "determination that a defendant violated his probation is a finding of fact which must be upheld unless such determination is clearly erroneous." State v. Martinez, 811 P.2d 205, 209 (Utah Ct. App. 1991). "Further, a finding of fact by a trial court is 'clearly erroneous' only if it is against the clear weight of the evidence." Turnbaugh v. Anderson, 793 P.2d 939, 941 (Utah Ct. App. 1990).

Here, the trial court revoked Briggs's probation upon finding that Briggs failed to complete an inpatient treatment plan at the Center. Although Briggs concedes that he did not complete the inpatient treatment program, he argues that the Center ejected him without justification and, therefore, his probation violation was not willful. We disagree. The trial court found that Briggs had been informed of the Center's rules, that he was aware of the consequences should he not abide by the rules, and that after receiving several warnings he continued to disregard the rules.

In reaching its conclusion that Briggs's probation violation was willful, the trial court relied on the testimony of three primary witnesses. Penny Chappoose, the Center's residential treatment coordinator, testified that at the time Briggs entered the program, he signed a copy of the Center's rules and regulations. She also testified that the Center's rules

prohibited patients from making their own appointments at the medical clinic and, instead, required that clinic appointments be made by the Center's staff and be scheduled only on Mondays. Chapoose stated that even after receiving verbal warnings, Briggs continued to schedule his own appointments at the medical clinic and did so on days other than Monday. Chapoose also testified that she received several complaints from the counselors that Briggs disrupted treatment sessions and missed sessions due to his non-conforming clinic appointments. Second, Lex Jenkins, a counselor for the alcohol and drug treatment program, largely corroborated Chapoose's testimony. Jenkins stated that Briggs had made medical appointments on his own without going through the proper channels, and that Jenkins had warned Briggs that doing so violated the Center's rules. Jenkins testified that even after this warning, Briggs continued to schedule appointments himself, causing him to miss classes in violation of the Center's rules. Finally, Steven Sespooch, the center's Alcohol Substance Abuse Program Director, testified that Briggs had violated the Center's rules by missing counseling sessions and making unscheduled medical clinic appointments. When "viewed in a light most favorable to the trial court's findings," Jameson, 800 P.2d at 804, the testimonies of Chapoose, Jenkins, and Sespooch are sufficient to support the trial court's determination that the Center was justified in ejecting Briggs from the program.<sup>1</sup>

Additionally, because the record indicates that Briggs violated the rules of the Center even after several explicit warnings, we hold that the trial court did not abuse its discretion when it determined Briggs willfully violated the conditions of his probation. Briggs relies heavily on State v. Hodges, 798 P.2d 270 (Utah Ct. App. 1990), for the proposition that before probation is revoked, the court must find that the

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<sup>1</sup>Briggs relies on the testimony of Dr. Norman D. Bell for the proposition that his behavior was not disruptive and that he should have been permitted to complete the program. The trial court was free, however, to reject this evidence in favor of that provided by the other witnesses. See Brookside Mobile Home Park v. Peebles, 2002 UT 48, ¶31, 48 P.3d 968 (noting that the finder of fact was free to choose which witnesses to believe); cf. Utah R. Civ. P. 52(a) ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."); Hone v. Hone, 2004 UT App 241, ¶5, 95 P.3d 1221 (recognizing due regard should be given to fact finder's opportunity to observe witnesses).

probation violation was willful. See id. at 276. In Hodges, however, there was "[n]o evidence in the revocation proceedings suggest[ing] that appellant was violating program rules." Id. at 277. In the current case, the trial court specifically found that Briggs had violated the Center's rules and that the Center was justified in ejecting him from the program. The trial court was not required to use the magic word "willful" in its findings of fact. Those findings identify sufficient evidence of deliberate behavior to support the conclusion that Briggs willfully violated his probation conditions. Thus, the trial court did not abuse its discretion when it revoked Briggs's probation.

Because we hold that the trial court did not abuse its discretion in finding that Briggs's willful violations of the Center's rules warranted his expulsion from the program, we do not reach Briggs's argument that the alternative ground for ejecting him from the program was based improperly on health issues.

Accordingly, we affirm.

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Carolyn B. McHugh, Judge

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WE CONCUR:

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Russell W. Bench,  
Presiding Judge

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James Z. Davis, Judge