

## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Kimberly Dawn Fields,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 29, 2021

Court of Appeals Case No.  
21A-CR-951

Appeal from the DeKalb Superior  
Court

The Honorable Adam C. Squiller,  
Judge

Trial Court Cause No.  
17D01-1907-F2-10

**Crone, Judge.**

## Case Summary

- [1] The trial court found that Kimberly Dawn Fields violated her probation by using methamphetamine and possessing fentanyl, and it revoked her suspended sentence. Fields argues that the finding regarding fentanyl is not supported by sufficient evidence. We affirm.

## Facts and Procedural History

- [2] In April 2020, Fields pled guilty to level 4 felony methamphetamine possession and was sentenced to three years, with 180 days executed and the remainder suspended to probation. In December 2020, the State filed a petition to revoke or modify probation alleging that Fields violated the conditions of her probation by failing to attend a substance abuse assessment, testing positive for methamphetamine, and possessing a controlled substance, i.e., fentanyl. At the factfinding hearing, the State presented evidence that one of Fields's urine samples collected by the probation department tested positive for methamphetamine. Also, a detective testified that he stopped a car with a "fictitious" license plate driven by a woman who presented an Indiana identification card for Kimberly Dawn Fields. Tr. Vol. 2 at 29. The detective verified that the image on the ID card "was, in fact, [that of] the driver[.]" *Id.* Inside the car, the detective found a baggy containing a substance that the woman admitted to be fentanyl, as well as a syringe that she admitted using to inject the fentanyl. The substance tested positive for fentanyl. During her testimony, Fields denied using methamphetamine and denied being present at the traffic stop, claiming that her ID had been stolen months earlier. The trial

court found that Fields violated her probation by using methamphetamine and possessing fentanyl, stating that “she continued to use controlled substances, continued to possess controlled substances, didn’t take any responsibility for it, and in the Court’s opinion, was not truthful with the Court.” *Id.* at 54. The court revoked her suspended sentence, and this appeal ensued.

## Discussion and Decision

[3] Probation is a matter of grace left to the trial court’s discretion, not a right to which the defendant is entitled. *Pierce v. State*, 44 N.E.3d 752, 754 (Ind. Ct. App. 2015).

In deciding whether to revoke probation, a trial court first must make a factual determination as to whether there was a violation of a condition of probation. If a violation is found, then the trial court must determine the sanctions for the violation. A revocation proceeding is civil in nature and the State has to prove its allegations by only a preponderance of the evidence.

*Id.* at 755 (citations omitted). In other words, the State must show only that the defendant more likely than not violated a condition of probation. *See Fry v. State*, 990 N.E.2d 429, 448 (Ind. 2013) (explaining preponderance standard). “We review insufficiency of evidence claims in a probation proceeding as we do any other sufficiency of the evidence question. We will not reweigh evidence or judge credibility of witnesses. We look only at the evidence favorable to the State and all reasonable inferences therefrom.” *Pierce*, 44 N.E.3d at 754 (citations omitted).

[4] Fields argues that the trial court's finding that she possessed fentanyl is not supported by sufficient evidence, and therefore remand is appropriate to determine the proper sanction for the remaining probation violation. Specifically, she argues that a failure of proof occurred because the detective never actually identified her in court as the driver of the car at the traffic stop. But this argument is fatally undermined by her own defense, which was based on the premise that her ID card, which she claimed had been stolen, was the same card that was presented by the driver at the traffic stop. The detective testified that the image on the ID card was that of the driver, and the trial court did not find Fields's testimony credible. Based on the foregoing, we conclude that sufficient evidence was presented that Fields possessed fentanyl. Accordingly, we affirm.

[5] Affirmed.

Bailey, J., and Pyle, J., concur.