

## 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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Travis Arthur Graham,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 28, 2022

Court of Appeals Case No.  
21A-CR-2019

Appeal from the Hendricks  
Superior Court

The Honorable Mark A. Smith,  
Judge

Trial Court Cause No.  
32D04-1709-F3-34

**Brown, Judge.**

- [1] Travis Arthur Graham appeals the revocation of his probation and asserts that the trial court committed fundamental error in revoking his probation and argues he was not advised of his due process rights. We affirm.

### ***Facts and Procedural History***

- [2] On September 5, 2017, the State charged Graham with robbery as a level 3 felony, auto theft as a level 6 felony, and theft as a class A misdemeanor under cause number 32D04-1709-F3-34 (“Cause No. 34”). Graham pled guilty to robbery as a level 3 felony. On December 17, 2018, the court sentenced Graham to 2,190 days with credit for 647 days, 730 days suspended, and 813 days “to be served straight time at” work release. Appellant’s Appendix Volume II at 83. The court dismissed the remaining counts.
- [3] On January 25, 2019, the State filed a Petition and Notice of Work Release Violation. On January 29, 2019, the State filed a Petition and Notice of Probation Violation alleging that Graham had been charged with failure to return to lawful detention as a level 6 felony under cause number 32D04-1901-F6-83 (“Cause No. 83”).
- [4] On February 11, 2019, the court held a hearing by video. Graham indicated that he was present. A videotape was played in which Magistrate Michael J. Manning advised Graham of his rights. The court then asked Graham if he was able to hear the portions of the recording that discussed his rights, and Graham answered affirmatively. The court asked Graham if he had any

questions about his rights, and Graham answered in the negative. The court appointed counsel, entered a denial, and scheduled a hearing.

[5] On November 2, 2020, the court held a hearing on the probation revocation as well as Cause No. 83 at which Graham was represented by counsel. The court, Graham, and his counsel discussed a plea agreement. Graham admitted that he knowingly or intentionally failed to return to lawful detention. He also indicated that he understood he was admitting that he violated probation. When asked if there was an agreement “on the other case to resolve that violation,” Graham’s counsel answered affirmatively. Transcript Volume II at 21. The court accepted the plea for Cause No. 83. The court found that Graham admitted to committing a new criminal offense while on probation under Cause No. 34. The court and the parties discussed placing Graham at Trinity Life Ministries. Near the end of the hearing, the court stated: “[M]y intent is either, if you still, if you still need more information from him to send him over there back to you, you finish up with what you need to do. And, then from there, he is ordered to report directly to Trinity today.” *Id.* at 32. The court then told Probation Officer Brittany Stodghill to “follow up, if he is not there, you file your violation.” *Id.* That same day, the court entered an Order on Violation which ordered Graham to complete the Trinity Life Treatment Program.

[6] On November 4, 2020, the State filed a Petition and Notice of Probation Violation alleging that Graham failed to enroll in the Trinity Life Treatment Inpatient Program. On November 11, 2020, Graham filed a Motion to Be

Placed in Hendricks County Work Release Center Pending Placement Into Treatment Center.

- [7] On November 30, 2020, the court held a status of placement hearing at which Graham appeared with counsel. Graham's counsel stated that Graham had been released from jail and was attempting to enter the Trinity Life Treatment Program but it was "not taking new people right now because of the coronavirus problem." *Id.* at 35. The court scheduled another hearing.
- [8] On December 16, 2020, the State filed a Supplemental Petition and Notice of Probation Violation alleging that Graham possessed and consumed methamphetamine and marijuana.
- [9] On May 6, 2021, the court held a hearing at which Graham was present. A videotape was played in which Magistrate Manning advised Graham of his rights. Graham stated: "I was supposed to go to Trinity and they didn't have a bed open for me when they released me, and that is kind of (inaudible) and uh, I peed, I peed dirty and they put a warrant out on me, that is what it was." *Id.* at 45. The court scheduled another hearing.
- [10] On August 6, 2021, the court held a hearing, and Graham's counsel stated that "we would stipulate to a true bill that there was a violation there." *Id.* at 49. On August 16, 2021, the court entered an order finding that Graham violated his probation and ordered him to serve 730 days in the Department of Correction.

## *Discussion*

- [11] Graham argues that the court committed fundamental error when it revoked his probation and ordered him to serve the entirety of his previously suspended sentence and asserts he was not advised of his due process rights. Specifically, he argues the trial court did not inform him that the alleged violation must be proven by a preponderance of the evidence, evidence shall be presented in open court, and he was entitled to confrontation, cross-examination, and representation by counsel.
- [12] The fundamental error doctrine is extremely narrow and applies only when the error amounts to a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *Lehman v. State*, 926 N.E.2d 35, 38 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. We also observe that the deprivation of due process is fundamental error. *See Goodwin v. State*, 783 N.E.2d 686, 687 (Ind. 2003); *Wilson v. State*, 514 N.E.2d 282, 284 (Ind. 1987). Although probationers are not entitled to the full array of constitutional rights afforded defendants at trial, the Due Process Clause of the Fourteenth Amendment does impose procedural and substantive limits on the revocation of the conditional liberty created by probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Generally, the minimum requirements of due process that inure to a probationer at a revocation hearing include: (a) written notice of the claimed violations of probation; (b) disclosure of the evidence against him; (c) an opportunity to be heard and present evidence; (d) the right to confront and cross-examine adverse

witnesses; and (e) a neutral and detached hearing body. *Id.* See also Ind. Code § 35-38-2-3 (providing that “the court shall conduct a hearing concerning the alleged violation” and “[a] person may admit to a violation of probation and waive the right to a probation violation hearing after being offered the opportunity to consult with an attorney”).

[13] Ind. Code § 35-38-2-3(e) provides in part: “If the person admits to a violation and requests to waive the probation violation hearing, the probation officer shall advise the person that by waiving the right to a probation violation hearing the person forfeits the rights provided in subsection (f).” Ind. Code § 35-38-2-3(f) provides: “Except as provided in subsection (e), the state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.”

[14] At the February 11, 2019 hearing, a videotape was played in which Magistrate Manning stated:

If you are here because a probation, home detention, or work release violation has been filed against you I ask that you may [sic] close attention to what I’m about to say. I’m about to provide you with your constitutional rights. You have the right to an evidentiary hearing. At that hearing the State of Indiana must present evidence to prove to the court by a preponderance of the evidence that you violated the conditions of your probation, home detention or work release commitment. You have the right to be represented by an attorney at that evidentiary hearing. If you cannot afford an attorney the Court will appoint one to represent you. You have the right to confront and cross

examine any witnesses the State of Indiana calls to testify against you in open court. You have the right to require your witnesses to be present at the evidentiary hearing to testify on your behalf. At your request the clerk would issue subpoenas ordering those witnesses to appear and testify.

Transcript Volume II at 7-8. The court then asked Graham if he was able to hear the portions of the recording that discussed his rights, and Graham answered affirmatively. The court asked Graham if he had any questions about his rights, and Graham answered in the negative. The videotape played at the May 6, 2021 hearing provided the same advisement as that given at the February 11, 2019 hearing. *See id.* at 43-44. Under these circumstances reversal is not warranted.

[15] For the foregoing reasons, we affirm the trial court's order.

[16] Affirmed.

May, J., and Pyle, J., concur.