

## 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.



---

### ATTORNEY FOR APPELLANT

Ruth Johnson  
Freetown, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
  
Myriam Serrano  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Nicholas Greenlee,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

April 23, 2021

Court of Appeals Case No.  
20A-CR-1939

Appeal from the Adams Superior  
Court

The Honorable Patrick R. Miller,  
Judge

Trial Court Cause No.  
01D01-1904-F6-91

**Crone, Judge.**

## **Case Summary**

- [1] Nicholas Greenlee appeals the trial court's revocation of his probation. He asserts that his due process rights were violated before and during the revocation hearing. Finding that he has failed to establish reversible error, we affirm.

## **Facts and Procedural History**

- [2] In 2019, Greenlee pled guilty to level 6 felony theft. The trial court sentenced him to 730 days, with ninety days to be served at the Adams County Detention Center and the remainder suspended to probation. In May 2020, the State filed a petition alleging that Greenlee violated his probation. The petition was dismissed by agreement of the parties, and Greenlee's probation was extended by 180 days. In August 2020, the State filed a second probation violation petition, alleging that Greenlee had failed to attend scheduled probation appointments and had failed to contact his probation officer as required.
- [3] On September 17, 2020, Greenlee filed several pro se motions, including an admission of the alleged violations and a request for transport from the Allen County Jail, where he was facing felony charges in a separate cause. The trial court denied his transport request and conducted a hearing on September 21, 2020, with Greenlee participating telephonically from the Allen County Jail. The trial court explained that transporting him would have subjected him to two weeks of quarantine in two different counties, per COVID-19 protocols. Tr. Vol. 2 at 7. During the hearing, the trial court asked Greenlee whether he

had received a written copy of the petition, and he answered in the negative but stated that he knew the allegations. The court advised Greenlee as follows concerning his right to counsel:

Throughout the entirety of these matters, Mr. Greenlee, you do have a right to be represented by an attorney. If you cannot afford to hire an attorney, I will gladly appoint one through the public defender's office to represent you at little or no cost to yourself. Mr. Greenlee, I will also make you aware that in the courtroom today is in fact one of the public defenders, Brad Weber. So if you do ask for appointment of counsel, you would have the opportunity to speak with Mr. Weber virtually immediately on the spot before you go any further. Mr. Greenlee, if you do not want to get an attorney involved, you can certainly choose to represent yourself as long as you understand that you are giving up your right at that point and time to have counsel advise and represent you and be your legal advocate in these matters.

*Id.*

[4] Greenlee responded that he wanted to admit to the violations and proceed without counsel, indicating that he had too much going on in his life due to other causes pending against him in Allen and Wells Counties.<sup>1</sup> *Id.* at 8. The trial court took a factual basis and accepted his admissions. After hearing argument on the proposed penalties, the court revoked Greenlee's probation

---

<sup>1</sup> As of the date of the revocation hearing, Greenlee had charges pending in Allen County for level 3 felony burglary, level 4 felony arson, level 5 felony domestic battery, and level 6 felony resisting law enforcement. He had a level 6 felony auto theft charge pending in Wells County.

and remanded him to the Adams County Detention Center to serve 340 days of his previously suspended sentence. Greenlee now appeals.

## Discussion and Decision

[5] Greenlee contends that he was denied his constitutional right to due process during the probation revocation proceedings. We review a probationer's due process claims de novo. *Cooper v. State*, 900 N.E.2d 64, 67 (Ind. Ct. App. 2009). Probation "is a favor granted by the State, not a right to which a criminal defendant is entitled." *Id.* at 66 (quoting *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*). When facing a petition to revoke his probation, the petitioner is not entitled to the full panoply of rights he enjoyed prior to conviction. *Id.* However, he is entitled to certain due process protections during the revocation proceedings. *Id.* These include "written notice of the claimed violation, disclosure of the evidence against him, the opportunity to be heard and present evidence, the right to confront and cross-examine witnesses, and a neutral and detached hearing body[, and] 'representation by counsel.'" *Id.* (citation omitted); Ind. Code § 35-38-2-3. "When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary." *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006).

[6] Greenlee first asserts that he was denied minimum due process based on the State's failure to provide him written notice of the claimed violations. During his hearing, he responded in the negative when asked whether he had received

written notice but stated, “I know the allegations.” Tr. Vol. 2 at 4. The trial court nevertheless read the allegations to ensure that they were “both understanding the same thing.” *Id.* at 5. Greenlee never objected to the State’s failure to provide him written notice. As such, he waived the issue for review. *See Pinkston v. State*, 836 N.E.2d 453, 457 (Ind. Ct. App. 2005) (claim of error involving constitutional violation can be waived if not properly objected to at trial), *trans. denied* (2006). Waiver notwithstanding, the current probation violation proceeding was Greenlee’s second such proceeding in three months, and his pre-hearing filings indicate that he understood the claimed violations and had ample time to prepare to defend against them. Thus, he had actual knowledge of the allegations, heard the trial court’s recitation of them, and admitted to them. He therefore was not denied procedural due process based on the lack of written notice.

- [7] Greenlee also maintains that the trial court violated his due process rights by failing to advise him sufficiently concerning his right to counsel. He admits that he declined the trial court’s offer to consult with standby counsel, who was present in the courtroom, or to have counsel appointed. Nevertheless, he essentially claims that his waiver of his right to counsel was not knowingly, intelligently, or voluntarily made because the trial court failed to warn him of the pitfalls of proceeding pro se. In *Greer v. State*, 690 N.E.2d 1214 (Ind. Ct. App. 1998), *trans. denied*, another panel of this Court articulated the following concerning the trial court’s duty to warn a probationer of the pitfalls of self-representation:

We believe that a probationer who chooses to admit his probation violation places himself in a situation similar to that of a defendant who chooses to plead guilty to criminal charges. Neither person is in danger of ‘conviction’ at the hands of the State. It is unnecessary to warn such a person of the pitfalls of self-representation, for those pitfalls exist only when he is confronted with prosecutorial activity which is designed to establish his culpability. It is therefore clear that, when a probationer who proceeds pro se chooses to admit rather than to challenge his alleged probation violation, his knowing, intelligent, and voluntary waiver of counsel may be established even if the record does not show that he was warned of the pitfalls of self-representation.

*Id.* at 1217.

[8] Greenlee admitted to the violations and therefore was not confronted with prosecutorial activity designed to establish his culpability. Nevertheless, the trial court articulated to him his right to counsel and emphasized that there was a public defender already present in the courtroom for immediate consultation and/or representation. Yet when the court asked him whether he wanted to get counsel involved, he answered in the negative and emphasized that he had already filed five or six pro se motions. Tr. Vol. 2 at 8. Greenlee now appears to claim that his decision to proceed pro se was tied to his desire for a particular sanction, which he described as “hoping to get time served.”<sup>2</sup> *Id.* However,

---

<sup>2</sup> The transcript includes a lengthy discussion based on Greenlee’s concern over his credit-time calculations. The trial court emphasized that any such calculations would be complicated, because Greenlee had so many charges pending in other counties, had been in and out of various jails, and had agreed to a 180-day probation extension in exchange for the dismissal of his most recent probation violation in the current

the court had already explained the sanctions available to it if Greenlee admitted to the violations. *Id.* at 5-6; *see also* Ind. Code § 35-38-2-3(h) (listing sanctions available to court: continuing probation with or without modification; extending probation for no more than one year beyond original period; or ordering execution of all or part of previously suspended sentence). Greenlee could have chosen to consult with standby counsel concerning the sanctions and did not do so.

[9] Moreover, other factors have been held sufficient to support a finding of unequivocal waiver of the right to counsel; these include the probationer's experience within the criminal system and his demonstrated knowledge of how to request counsel. *Butler v. State*, 951 N.E.2d 255, 261 (Ind. Ct. App. 2011). Here, Greenlee was able to articulate his desire for the appointment of appellate counsel, had already demonstrated his ability to file pro se pretrial motions, and had experience within the criminal system, e.g., felony charges pending in two other counties and a previous probation violation proceeding just three months before the current proceeding. In short, the record supports the knowledge, intelligence, and voluntariness of Greenlee's waiver of counsel, and as such, we find no violation of his constitutional right to counsel.<sup>3</sup>

---

underlying cause. Tr. Vol. 2 at 11-24. Greenlee does not raise as an issue whether the trial court abused its discretion in its chosen sanction.

<sup>3</sup> Greenlee also alludes to the trial court's denial of his request for transport and suggests that this denial, when combined with his other allegations, amounted to cumulative error sufficient to have violated his due process rights. *See Inman v. State*, 4 N.E.3d 190, 203 (Ind. 2014) (in circumstances where prejudice has resulted, cumulative effect of errors may warrant reversal as denial of due process). However, Greenlee has

[10] In sum, Greenlee had actual knowledge of the probation violation allegations, admitted to them, declined to have counsel appointed or even to consult with standby counsel, and opted to proceed pro se with the sentencing portion of the proceedings. Thus, no reversible error occurred with respect to Greenlee's due process claims. Accordingly, we affirm.

[11] Affirmed.

Riley, J., and Mathias, J., concur.

---

failed to develop cogent argument as required by Indiana Appellate Rule 46(A)(8). As such, he has waived this claim for review. *Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005), *trans. denied*. Notwithstanding, we note that Greenlee's participation by telephone prevented his having to serve two-weeks of quarantine in two different counties per COVID-19 protocols. Greenlee has failed to demonstrate any error, whether cumulative or otherwise.