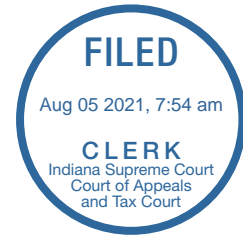


MEMORANDUM DECISION

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

Stephen Michael Ford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 5, 2021

Court of Appeals Case No.
20A-CR-1684

Appeal from the Hancock Superior
Court

The Honorable Dan E. Marshall,
Judge

Trial Court Cause No.
30D02-1902-CM-293

Sharpnack, Senior Judge.

Statement of the Case

[1] The trial court revoked Stephen Michael Ford's probation. His appeal claims the court violated his due process rights. He has waived the due process claims. We affirm.

Issue

- [2] The State presents the following dispositive issue: Did Ford waive his constitutional arguments based on due process by failing to raise them in the trial court?

Facts and Procedural History

- [3] To provide context for Ford’s allegations and our decision, we must set forth the timeline of events leading up to this appeal. Ford’s legal problems involve, in pertinent part, convictions in Hamilton County (“F6-5015”) and Hancock County (“CM-293”) and probation violations related to each.¹ The present appeal originates from Ford’s probation violation from his conviction in CM-293 in Hancock County.
- [4] Ford pleaded guilty to one count of operating a vehicle as an habitual traffic violator and one count of operating a vehicle while intoxicated endangering a person under F6-5015 in Hamilton County with an habitual vehicular substance offender enhancement. Prior to sentencing on that conviction, Ford was charged with Class A misdemeanor invasion of privacy under CM-293 in Hancock County on February 13, 2019. On March 13, 2019, the trial court in

¹ Resolution of Ford’s allegations on appeal requires a full discussion of the charges he faced in both counties. We have taken judicial notice under Indiana Evidence Rule 201(a)(2)(c) of certain information from the public docket in 29D04-1807-F6-5015 and cite to it to clearly explain the facts.

F6-5015 sentenced Ford to a direct commitment to Hamilton County Community Corrections residential work release for a term of 305 days.

[5] On April 19, 2019, Ford pleaded guilty in CM-293, and the sentence was to be served consecutively to Ford's sentence in F6-5015. Tr. Vol. II, p. 31. The terms of his probation included his agreement not to commit additional criminal offenses. Appellant's App. Vol. II, p. 26. During the guilty plea hearing the court advised Ford that, "if you do something while you're in jail even though you haven't begun that probation yet you need to understand that can be the basis of a violation." Tr. Vol. II, p. 32. "Because while probation is being held over your head that hasn't even started yet [because] you [may be] serving a sentence or probation on another matter, under Indiana [l]aw is[sic] you do something during that time period it can result in your probation being violated." *Id.* Ford acknowledged that he understood the court's advisement. At the same time, a no contact order was entered as a condition of his probation or executed sentence. Appellant's App. Vol. II, pp. 22-23.

[6] Next, on February 1, 2020, a notation on the Hancock County court's docket showed: "**Administrative Event** POR-No Contact Order-Probation/Executed Sentence expired Expired by Automated Service (POR-1094)." *Id.* at 10. The two docket entries for February 28, 2020, showed: "**Administrative Event** POR-No Contact Order-Probation/Executed Sentence expired; **No Contact Order Issued** POR-No Contact Order No Contact Order-Probation/Executed Sentence; Issued by: HON DAN MARSHALL." *Id.* at 10-11.

- [7] On March 2, 2020, Ford moved to dismiss or dissolve his case, claiming that because: 1) the plea provided for his sentence to be for time served; 2) the docket notation reflected that his probation and the protective order had expired; and 3) his fees had been paid, his case should be closed. *Id.* at 32. The court denied Ford’s motion the next day.
- [8] On June 5, 2020, Ford’s Hancock County Probation Officer Gayle Conley filed a violation report with a probable cause affidavit alleging that Ford was charged with possession of a controlled substance on May 29, 2020 in Hamilton County under Cause No. 29D04-2005-CM-3076. Officer Conley also alleged that Ford had tested positive for amphetamines and methamphetamines without having a valid prescription on May 19, 2020 in Hamilton County. The Hancock County Court issued a warrant for Ford’s arrest that same day based on those alleged violations.
- [9] Next, on August 17, 2020, Ford filed a “Motion to Dismiss/Writ of Habeas Corpus” in CM-293, alleging in pertinent part that: 1) any further punishment in Hancock County would amount to double jeopardy as he had already been punished in Hamilton County; 2) his probation in Hancock County ended on January 31, 2020; and 3) he was not sentenced to three years of probation in Hancock County, but was to serve his probation after the completion of his sentence in Hamilton County, which remains ongoing. *Id.* at 43-44.
- [10] On August 28, 2020, the Hancock County Court entered an order after hearing evidence and denied Ford’s motion to dismiss, denied his allegation of double

jeopardy, terminated Ford's probation in CM-293 as unsuccessful, and ordered him to serve 245 days in the Hancock County Jail for the violation. Ford now appeals.

Discussion and Decision

- [11] Ford appeals from the revocation of his probation in CM-293. An appeal from the revocation of probation requires us to, “consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses.” *Sanders v. State*, 825 N.E.2d 952, 953-54 (Ind. Ct. App. 2005).
- [12] Ford argues on appeal that he was denied due process. The State asserts that Ford waived this argument. We agree with the State. “[A] party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court.” *Sedona Dev. Group Inc., v. Merrillville Rd. Ltd. P’ship*, 801 N.E.2d 1274, 1280 (Ind. Ct. App. 2004). More specifically as pertains to the issues raised here, “[d]ue process rights are subject to waiver, and claims are generally waived if raised for the first time on appeal.” *Figg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010).
- [13] Ford did not argue a due process violation in the motion to dismiss that he filed in the trial court. Nor did he raise such an argument during his probation violation hearing. Consequently, Ford has waived any due process argument.
- [14] Additionally, Ford did not raise fundamental error in his appellate brief; consequently it, too, is waived.

Conclusion

[15] For the reasons stated above, we affirm the trial court.

[16] Affirmed.

Kirsch, J., and Weissmann, J., concur.