

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joseph Edminster,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 28, 2022

Court of Appeals Case No.
21A-CR-1890

Appeal from the Howard Circuit
Court

The Honorable William C.
Menges, Jr., Special Judge

Trial Court Cause No.
34C01-1508-F6-127

Weissmann, Judge.

[1] Joseph Edminster absconded from a re-entry court program for five years while on probation for Level 6 felony intimidation. As a sanction for the probation violation, the trial court reinstated Edminster's previously suspended, two-year prison sentence. Edminster now appeals, arguing that he received ineffective assistance of counsel at his probation revocation hearing. Because probation revocation hearings are civil proceedings, we apply a due process standard for evaluating his counsel's effectiveness. Edminster does not establish a violation of that standard. We therefore affirm.¹

Facts

[2] In 2016, Edminster pleaded guilty to Level 6 felony intimidation. He was sentenced to two years in prison, suspended to probation, with a requirement that he complete a re-entry court program. But shortly after entering the program, Edminster absconded from the re-entry court for five years. When he was finally arrested in 2021, the re-entry court terminated his participation in the program, and the probation department moved to revoke his probation.

[3] At his probation revocation hearing, Edminster admitted to violating the terms of his probation by failing to complete the re-entry court program. This exchange between the trial court, Edminster's attorney, and Edminster followed:

¹ The parties use various captions throughout this appeal. To avoid confusion, we adopt the caption utilized by Edminster in his notice of appeal.

[Court]: Sir, any evidence you wish to offer in the matter of sentencing, Mr. Dabrowski?

[Attorney]: Uh, not evidence, just recommendation Judge. My uh, client after considering his options would like the Court to consider to place him on In Home Detention. If that's not available, to place him on Work Release, but a, his preference would be to be on In Home in order to complete his sentence.

[Court]: Does your client wish to make an unsworn statement uh Mr. Dabrowski?

[Attorney]: Mr. Edminister (sic) would you like to address the Court?

[Edminister]: Uh, Your Honor, I would just like to say that I have changed my life for two years and it's as you know with (INAUDIBLE) in 2016, and I'm just trying to do better with my life and I'm asking you to give me an opportunity on In Home Detention to better myself.

Tr. Vol. II, p. 5.

[4] The trial court sanctioned Edminster for the probation violation by reinstating his two-year prison sentence and ordering that it be served consecutive to his sentence in cause number 34D01-1402-FD-77 (Case 77) as well as any sentences imposed in two other matters that remain pending. Edminster appeals.

Discussion and Decision

[5] Edminster argues that he received ineffective assistance of counsel because his attorney failed to present mitigating evidence during the penalty phase of his

probation revocation hearing. Relying on the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984), Edminster claims his attorney's performance was both deficient and prejudicial. But *Strickland* concerns a criminal defendant's right to counsel under the Sixth Amendment to the United States Constitution. *See* 466 U.S. at 684-85. Probationers, like Edminster, are not criminal defendants, and their right to counsel at revocation hearings arises from Indiana Code § 35-38-2-3(f), not the Sixth Amendment. Thus, *Strickland* does not apply to Edminster's claim. *See Gibson v. State*, 154 N.E.3d 823, 826 (Ind. Ct. App. 2020).

[6] As the State correctly asserts, probation revocation hearings are civil proceedings in which the right to counsel flows from the Due Process Clause of the Fourteenth Amendment. *Id.* (citing *A.M. v. State*, 134 N.E.3d 361, 365 (Ind. 2019)). We therefore apply a due process standard in evaluating the effectiveness of probation-revocation counsel. *Id.*. The due process standard “essentially asks whether counsel represented the client in a procedurally fair proceeding that yielded a reliable judgment from the trial court.” *A.M.*, 134 N.E.3d at 365 (citing *Childers v. State*, 656 N.E.2d 514, 517 (Ind. Ct. App. 1995)). We answer that question affirmatively here.

[7] The record reveals that counsel appeared at Edminster's probation revocation hearing and recommended alternative placements to prison as a sanction for Edminster's probation violation. Edminster also made a statement to the trial court in support of in-home detention as his preferred placement. As there is no sign of procedural unfairness and no indication that the trial court's judgment is

unreliable, Edminster has failed to establish that he received ineffective assistance of probation-revocation counsel.

[8] The trial court's judgment is affirmed.

Najam, J., and Vaidik, J., concur.