



ATTORNEY FOR APPELLANT

Kelly Starling
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

James Saucerman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2022

Court of Appeals Case No.
22A-CR-501

Appeal from the Marion Superior
Court

The Honorable Steven Rubick,
Magistrate

Trial Court Cause No.
49G20-1904-F2-014584

Robb, Judge.

Case Summary and Issue

- [1] James Saucerman appeals the revocation of his probation. Saucerman raises two issues for our review, of which we find the following dispositive: whether he was deprived of due process because the trial court did not advise him of certain rights in the probation revocation proceedings. Concluding Saucerman was denied fundamental due process because he was not advised as required by statute, we reverse and remand.

Facts and Procedural History

- [2] In 2020, Saucerman pleaded guilty to dealing in methamphetamine and was sentenced to a total of 1,095 days, with eighty-five days to be executed and the remainder suspended to probation. Conditions of Saucerman’s probation included that he “not use illegal drugs or any controlled substance . . . and submit to drug screening as directed[,]” participate in a substance abuse evaluation and/or treatment if required, and “report to Probation as directed and communicate truthfully with the Probation Department.” Appellant’s Appendix, Volume II at 93.
- [3] On November 5, 2021, the State filed a notice of probation violation alleging Saucerman failed to comply with and follow recommendations of a substance abuse evaluation and failed to submit to drug screens as directed on two

occasions, once in September and once in October.¹ A hearing was set for November 30, but Saucerman failed to appear. A warrant was issued for his arrest. In December, the State amended the notice of probation violation to add a new allegation of failing to submit to a drug screen in December, as well as failing to refrain from the use of illegal drugs (Saucerman tested positive for methamphetamine on November 25), and failing to report to the probation department as directed on two occasions, once in November and once in December.

[4] Saucerman was arrested on the warrant on February 13, 2022, and a remote initial hearing on the notice of probation violation was held on February 16. The trial court swore Saucerman in and then the following colloquy ensued:

The Court: . . . On December 10, the Probation Department filed a notice of violation indicating you were in violation of your probation having failed to comply with [terms of your probation].

You were convicted of Dealing in Methamphetamine. You have a 1,010 day suspended sentence. If you are found to be in violation of your probation, your probation is subject to revocation and under those circumstances, you could be required to serve all or part of that 1,010 day suspended sentence at the Department of Correction.

¹ This was the second notice of probation violation filed against Saucerman. The first was filed in November 2020 and Saucerman was sanctioned with thirty days in the Marion County Jail and returned to probation.

I'm entering a denial of these new allegations for you and the public defender is appointed to represent you in this case.

[L]et's go ahead and set this case for a hearing.

The Defendant: Sir, can I say something?

The Court: Well, you're under oath. You're facing violations and a 1,000 day potential revocation. If you want to volunteer some information, I'm not going to stop you but you may end up

—

The Defendant: Yes, I do, sir.

The Court: All right.

The Defendant: The last time I went to a probation meeting —

[Public Defender]: Stop. This is not a (unintelligible) . . . today. You're going to want to talk to one of us prior to making an argument about what should happen.

The Defendant: I was not arguing. I just — I mean, I don't even really care any more [sic]. It's — I — I've been doing my best and my best isn't good enough. So I'm not going to be able to do any better than what my best is. [S]he gave me a meeting for probation meeting on [November] 30th and I lost my paper and I tried to call to find out when my meeting was. When I finally found . . . the number to call them, there was already a violation meeting that had been held the exact same day prior to my meeting for probation. So I already had a warrant before I had to go into Probation. And I was never even informed that . . . I had a violation hearing.

The Court: [Public defender], do you wish to make any argument given your client's admission of the pending violations?

Transcript, Volume 2 at 3-5. The trial court found Saucerman had admitted two of the allegations of the notice of violation (that he failed to submit to a drug screen as directed in December and that he failed to report to probation as directed in November and December) and revoked his probation, ordering that he serve the previously suspended 1,010 days in the Department of Correction. *See id.* at 6. Saucerman now appeals.

Discussion and Decision

- [5] Saucerman contends he was denied fundamental due process at the probation revocation hearing because he was not properly advised of his rights before the trial court accepted what it considered an admission and revoked his probation. Whether a party was denied due process is a question of law that we review de novo. *Hilligoss v. State*, 45 N.E.3d 1228, 1230 (Ind. Ct. App. 2015).
- [6] “A probationer faced with a petition to revoke his probation is not entitled to the full panoply of rights he enjoyed prior to the conviction.” *Cooper v. State*, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009). However, because a probation revocation can result in a loss of liberty, the probationer is entitled to certain due process protections during the proceedings. *Hilligoss*, 45 N.E.3d at 1230. These due process requirements are codified in Indiana Code section 35-38-2-3.

- [7] When a petition to revoke probation is filed, “the court shall conduct a hearing concerning the alleged violation.” Ind. Code § 35-38-2-3(d). At such a hearing, evidence must be presented in open court, and the probationer is “entitled to confrontation, cross-examination, and representation by counsel.” Ind. Code § 35-38-2-3(f). If a probationer chooses to admit to a probation violation rather than have an evidentiary hearing, he must be advised that he is giving up those protections. Ind. Code § 35-38-2-3(e).
- [8] In *Hilligoss*, the probationer admitted to a violation but was not first advised of the due process rights he was forfeiting by doing so. In reviewing his claim of fundamental error, we noted that “a probationer’s admission that he violated the terms of probation does not entitle him to less due process than a probationer who contests the asserted violations.” 45 N.E.3d at 1231 (quoting *United States v. Holland*, 850 F.2d 1048, 1051 (5th Cir. 1988)). Accordingly, we held that “a trial court’s failure to ensure that a probationer who admits to a probation violation has received the advisements as required under Indiana Code Section 35-38-2-3(e) constitutes a fundamental violation of the probationer’s due process rights.” *Id.* at 1232.
- [9] Saucerman asserts, and the State concedes, that “[j]ust as with *Hilligoss*,” the trial court did not advise him prior to accepting what the trial court considered an admission that he was giving up his rights to have an evidentiary hearing where the State proves the allegations by a preponderance of the evidence and

to confront and cross-examine the witnesses against him.² Brief of Appellant at 11; *see* Brief of Appellee at 7. We agree: the trial court's failure to properly advise Saucerman denied him fundamental due process and entitles him to a new hearing. *See Hilligoss*, 45 N.E.3d at 1232.

Conclusion

[10] We reverse the trial court's revocation of Saucerman's probation and remand for a new hearing on the alleged violations.

[11] Reversed and remanded.

Pyle, J., and Weissmann, J., concur.

² Saucerman also contends that despite the trial court's finding to the contrary, he did not admit to any probation violations. Because we reverse the revocation of Saucerman's probation and remand for a new hearing, the proceedings essentially begin anew, and we need not address this argument.