

## 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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Edward M. Hampton,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 6, 2022

Court of Appeals Case No.  
22A-CR-63

Appeal from the Allen Superior  
Court

The Honorable David M. Zent,  
Judge  
The Honorable Samuel R. Keirns,  
Magistrate

Trial Court Cause No.  
02D05-1903-F3-10

**Weissmann, Judge.**

- [1] Two years into a 15-year sentence, Edward M. Hampton convinced the trial court to suspend his remaining balance to probation, conditioned on him serving the first two years on work release and the third year on home detention. After only two months on work release, Hampton absconded and was quickly arrested. He admitted he violated the terms of his probation. The trial court revoked his probation and returned him to prison to serve the rest of his sentence.
- [2] Hampton appeals that determination, complaining that the trial court violated his right to due process in several ways and improperly revoked his probation. He also complains that the imposition of the fully executed sentence was too harsh. We find Hampton validly waived his right to counsel, no due process violation occurred, and the probation revocation and sanction were justified. We therefore affirm but remand for correction of the sentencing documents.

## Facts

- [3] In 2019, Hampton was charged with Level 3 felony robbery, Level 5 felony battery, and Level 6 criminal recklessness for robbing and stabbing a man. Hampton pleaded guilty to robbery under a plea agreement specifying dismissal of the other two counts. The trial court sentenced Hampton to 15 years imprisonment for the robbery conviction and “merged” the other two convictions. Hampton appealed, and this Court, by memorandum decision, affirmed his robbery conviction and sentence but remanded with instructions to vacate the convictions on the other two counts. *Hampton v. State*, case number

19A-CR-1456, slip op. at ¶¶ 16-17 (Ind. Ct. App. March 31, 2020). The trial court vacated those convictions as ordered.

[4] About 1 ½ years after he entered prison, Hampton sought and obtained the trial court’s recommendation for his placement in the Purposeful Incarceration Program. He completed the program six months later and immediately sought a modification of his sentence. In August 2021—about two years after imposing Hampton’s 15-year executed sentence—the trial court modified that sentence by suspending it to probation. The court required Hampton to spend the first two years of his probation on work release and the third year on home detention.

[5] Two months after he left prison, Hampton disappeared but was captured hours later in a hotel room. The State petitioned to revoke his probation, alleging Hampton violated the terms of his probation by failing “to successfully complete Allen County Community Corrections supervision.” App. Vol. II, p. 5. The State also charged him separately with escape.

[6] Hampton waived his right to counsel at the probation revocation hearing and represented himself instead. He admitted that he left work after six hours and “got a motel room” instead of returning to the work release center. Tr. Vol. II, p. 17. He also admitted he “relapsed” a week before absconding, although he did not provide details. *Id.* The trial court revoked his probation and ordered him to serve the rest of his 15-year sentence in prison.

## Discussion and Decision

- [7] Hampton’s challenge to the revocation of his probation is two-pronged. First, he claims the trial court violated his right to due process. Second, he asserts the trial court wrongly returned him to prison.
- [8] Probation is a matter of grace—a conditional liberty that is a favor, not a right. *Cooper v. State*, 917 N.E.2d 667, 671 (Ind. 2009). The trial court determines the conditions of probation and has the discretion to revoke probation when those conditions are violated, subject to appellate review for an abuse of that discretion. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

### I. Due Process

- [9] Hampton alleges he was denied his right to due process when the trial court: 1) “allowed” him to admit the violation without providing him a copy of the petition to revoke; 2) failed to advise him of “the possible consequences” and his right to appeal; 3) allowed Hampton to proceed pro se without validly waiving his right to counsel; 4) conducted an inadequate hearing; and 5) entered judgment allegedly without authority.
- [10] Probationers facing revocation are entitled to some procedural due process but not the full due process rights granted criminal defendants. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). The minimum requirements of due process in a contested probation revocation hearing include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of

evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)).

[11] We first note that Hampton has waived any due process claim by failing to object in the trial court or raise any due process violation as fundamental error on appeal. *See Terpstra v. State*, 138 N.E.3d 278, 285-86 (Ind. Ct. App. 2019) (finding alleged due process violations to which probationer did not object in revocation proceeding and which he did not claim as fundamental error on appeal were waived). Waiver notwithstanding, we are satisfied that Hampton was given the process he was due.

### A. Notice and Advisement

[12] Hampton claims he never received a copy of the probation revocation petition, so the trial court violated his due process rights by allowing him to admit the violation. Although notice of the allegations is one of the due process rights of probationers contesting a probation violation allegation, a probationer who admits the violation is not entitled to the same safeguards. *Terrell v. State*, 886 N.E.2d 98, 101 (Ind. Ct. App. 2008).

[13] In any case, Hampton was asked by the trial court whether he understood “what they say you did to violate probation,” and Hampton answered, “Yes.” Tr. Vol. II, p. 14. He never revealed to the trial court at the hearing that he lacked a copy of the probation revocation petition, nor did he request a copy. A litigant may not benefit from an error that the litigant commits or invites or that is a natural consequence of the litigant’s own neglect or misconduct. *Wright v. State*, 828 N.E.2d 904, 907 (Ind. 2005). And, most importantly, Hampton has not revealed on appeal how he was prejudiced by this alleged lack of notice. *See Tewalt v. Tewalt*, 421 N.E.2d 415, 420 (Ind. Ct. App. 1981) (rejecting, in part, due process claim based on inadequate notice where appellant did not establish prejudice).

[14] As to the alleged lack of advisements of his right to appeal and the consequences of his admission, Hampton again reveals no resulting harm. A trial court’s failure to advise a defendant of his right to appeal is harmless if the defendant lost none of his appellate rights and has shown no harm. *Carter v. State*, 438 N.E.2d 738, 740-41 (Ind. 1982). And we find that the trial court made clear the consequences of admitting the probation violation. At the modification hearing, the court advised Hampton:

I send people back to prison from Residential Services almost on a weekly basis. If you’re going to be serious out there and continue rehabilitation, good. If you’re not, you’ll be right back in here and I’ll send you back to DOC. Don’t give those folks any trouble. Do what they tell you to do. Keep on the path you’re on. I’m glad, as you mention, you made some comment of the principles you lived by and you dedicated yourself to the

street, yeah, your record is terrible. Drugs and stealing and robberies. Go on the path you want to stay on and you can stay out of jail. If you don't, you go back. It's that simple.

Tr. Vol. II, p. 11.

- [15] We find no due process violation in connection with the trial court's advisements.

## B. Waiver of Counsel

- [16] Hampton also claims he was denied due process because he never validly waived his right to counsel. Waiver of counsel must be knowing, voluntary, and intelligent. *Hammerlund v. State*, 967 N.E.2d 525, 527 (Ind. Ct. App. 2012). “There are no magic words a judge must utter to ensure a defendant adequately appreciates the nature of the situation.” *Kubsch v. State*, 866 N.E.2d 726, 736 (Ind. 2007), *reh'g denied*. “Rather, determining if a defendant's waiver was knowing and intelligent depends on the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused.” *Id.* (quotations omitted). We review de novo a trial court's finding that a probationer waived his right to counsel. *Hammerlund*, 967 N.E.2d at 528.
- [17] Hampton contends his waiver was invalid because the trial court failed to advise him of the consequences of proceeding pro se and “the nature, extent and importance of the right to counsel.” Appellant's Br., p. 11. But a warning about the pitfalls of self-representation is not a prerequisite to a valid waiver of counsel when the probationer admits the violation. *Butler v. State*, 951 N.E.2d

255, 259 (Ind. Ct. App. 2011). And the trial court adequately advised Hampton of his right to counsel at the beginning of the probation revocation hearing:

THE COURT: This is 19-F3-10. Did you read your rights this morning?

THE DEFENDANT: Yes, I did.

THE COURT: Did you understand those rights?

THE DEFENDANT: Yes, I did.

THE COURT: The [sic] filed a Petition to Revoke your probation alleging that you failed [to] successfully complete Allen County Community Corrections supervision while serving consecutive sentence 19-F6-322; you violated that sentence prior to starting your supervision in this case. Do you understand what they say you did to violate probation?

THE DEFENDANT: Yes.

THE COURT: Are you requesting a public defender?

THE DEFENDANT: Is it possible that I could just proceed pro-se and plead guilty to the whatever and just get it over with today?

THE COURT: So, Mr. Hampton, you wish to waive the rights that you read and admit to the allegation that I read to you?

THE DEFENDANT: Yes, Sir.

THE COURT: Do you understand you have the right to have an attorney; if you cannot afford one, one would be appointed to you?

THE DEFENDANT: Yes, I do.



THE COURT: Do you understand you have the right to have a hearing requiring the State of Indiana to prove that you violated probation?

THE DEFENDANT: Yes.

THE COURT: And you wish to give up all those rights and admit to the allegations that I just read to you?

THE DEFENDANT: Yes sir, and if it pleases The Court, I would like to address The Court before any sentencing or whatever.

Tr. Vol. II, pp. 14-15.

[18] The circumstances also suggest a valid waiver. Hampton had just spent most of the prior two years serving as his own counsel in the robbery case, so he knew the consequences of waiving counsel. App. Vol. II, pp. 65-90. At the time of his modification hearing, he also was studying to be a paralegal and enrolled in college courses. Tr. Vol. II, p. 5. Hampton has not shown that his waiver was not knowing, voluntary, and intelligent.

### C. Hearing

[19] Hampton next claims that he was denied due process because he had no opportunity to present mitigating evidence. *See Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) (probationer who admits violation must be given opportunity to present evidence that explains and mitigates his violation). But the trial court allowed him to present extensive arguments for leniency before it sanctioned him. Tr. Vol. II, pp. 15-18. Hampton never sought additional opportunities to present evidence and does not specify on appeal any additional

evidence that he would have offered. We find no error. *See Vernon v. State*, 903 N.E.2d 533, 537 (Ind. Ct. App. 2009) (finding defendant’s testimony during evidentiary hearing on whether probation violation occurred was sufficient opportunity to present mitigating evidence on sanction).

## D. Magistrate’s Authority

[20] Hampton relies on a repealed statute—Indiana Code § 33-23-5-9 (2019)—when arguing that the magistrate lacked authority to sanction him for the probation violation without approval of the presiding judge. *See* Ind. P.L. 162-2020, § 4 (repealing statute effective July 1, 2020). With one limited exception not applicable here, magistrates had “the same powers as a judge” on November 30, 2021, when the court revoked Hampton’s probation. Ind. Code § 33-23-5-8.5 (2020). Under that statutory authority, the magistrate had power to enter final judgment here. Hampton has established no due process violation.

## II. Sanction

Hampton also contends the trial court improperly sanctioned him to a fully executed sentence. He argues the trial court improperly ignored lesser sanctions and the Abstract of Judgment wrongly treats dismissed counts as merged convictions. The only error that we find is in the Abstract of Judgment, and we remand for its correction.

## A. Lesser Sanctions

- [21] Hampton claims the trial court ignored his mental illness and sanctions other than revocation. *See* Ind. Code § 35-38-2-3(h) (sanctions for probation violation include continuing or extending probation or ordering part or all of suspended sentence to be served in prison). Trial courts are given “considerable leeway” in determining probation revocation sanctions, which are reviewed only for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).
- [22] Hampton claims the trial court’s abuse of discretion is evident in this statement by the trial court when sanctioning him: “based on these circumstances, you’re not going back into any sort of probation whatsoever, and obviously, you can’t do community-based supervision at this point, and we have no other option than to send you back to the Department of Correction[ ].” Tr. Vol. II, pp. 18-19.
- [23] Contrary to Hampton’s arguments, the court’s statement is not based on any misunderstanding of the options available or its failure to consider Hampton’s mental illness. Instead, the court essentially found that less restrictive placements were not viable options for Hampton, given that he fled home detention after only two months due to unhappiness with the home detention rules, thereby committing a new felony offense of escape. The trial court was not required to enter a written statement reflecting its consideration of alternatives to incarceration. *See Castillo v. State*, 67 N.E.3d 661, 665 (Ind. Ct. Ap. 2017). The trial court’s silence on Hampton’s claim of mental illness also

was not improper. *See id.* at 665-66 (finding trial court need not provide specific reasons for its chosen sanction). The evidence supports the trial court’s sanction, which was well within its discretion.

## B. Abstract of Judgment

[24] Hampton challenges the newly amended Abstract of Judgment, which reflects that the battery and criminal recklessness counts “merged” with the robbery count. The same error was in the first Abstract of Judgment, which the trial court corrected at our direction on remand after Hampton’s direct appeal. *Hampton v. State*, case number 19A-CR-1456, slip op. at ¶ 17 (Ind. Ct. App. March 31, 2020).

[25] We remand with instructions to correct the latest Abstract of Judgment by showing the battery and criminal recklessness counts as dismissed, rather than “merged.” We otherwise affirm the trial court’s judgment.

Robb, J., and Pyle, J., concur.