

## 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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Brandan Joseph Esparza,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 16, 2022

Court of Appeals Case No.  
22A-CR-1144

Appeal from the Madison Circuit  
Court

The Honorable David A. Happe,  
Judge

Trial Court Cause No.  
48C04-1703-F4-711

**Pyle, Judge.**

## Statement of the Case

- [1] Brandan Esparza (“Esparza”) appeals the revocation of his probation, arguing that there was insufficient evidence to support the revocation. Because there was sufficient evidence to support the revocation, we affirm the trial court’s judgment.
- [2] We affirm.

### Issue

Whether the trial court abused its discretion by revoking Esparza’s probation.

### Facts

- [3] In June 2017, Esparza pleaded guilty to Level 5 felony burglary and Level 6 felony theft. Pursuant to his plea agreement, the trial court sentenced Esparza to five years for his burglary conviction and two years for his theft conviction. The trial court ordered the sentences to be served concurrently, but consecutively to a separate sentence in another cause unrelated to this appeal. The trial court ordered that Esparza serve his time under this cause in Community Corrections and suspended two years of the sentence to the Madison County Work Release Center.
- [4] Esparza began his work release in early 2020. A few months later, the work release program placed Esparza on adult day reporting due to the COVID-19 pandemic. In December 2020, the Madison County Continuum of Sanctions Coordinator (“COS Coordinator”) for Esparza’s case filed a petition to

terminate adult day reporting. In the petition, the COS Coordinator alleged that Esparza had violated the rules of his adult day reporting by: (1) failing to maintain contact with his case manager; (2) failing to report to the Community Justice Center; and (3) failing to pay his probation costs and being in arrears by \$233.05. In January 2021, the COS Coordinator amended her petition and also alleged that Esparza had violated the terms of his adult day reporting by being charged with Class A misdemeanor possession of a controlled substance. In March 2021, Esparza admitted to the allegations in the amended petition. As a result, the trial court revoked eighteen months of Esparza's sentence and ordered Esparza to serve this time in home detention before returning to community corrections. In June 2021, another petition was filed with the trial court by Esparza's home detention coordinator that alleged that Esparza had: (1) failed to report to the home detention office after receiving in-patient services; and (2) committed the new offense of Class A misdemeanor resisting law enforcement. Esparza admitted to these allegations in July 2021.

[5] In November 2021, the COS Coordinator filed with the trial court a notice of work release termination. In its filing, the COS Coordinator requested that the trial court remove Esparza from work release because he had committed several rule violations. These violations included, among other things, testing positive for marijuana, committing new criminal offenses of obstruction of justice, resisting law enforcement, and failing to return to work release. In December 2021, the trial court placed Esparza in the Continuum of Sanctions program for

violating the terms of his suspended sentence. In January 2022, the Continuum of Sanctions Board met and placed Esparza back in the work release program.

[6] Later in January 2021, Madison County Work Release Correctional Officer Patrick Delturco (“Officer Delturco”) conducted a walkthrough of the male dorms at the work release facility. While conducting his walkthrough, Officer Delturco noticed multiple Q-tips lying on all sides of Esparza’s bunk. Officer Delturco asked Esparza to stand up so that Esparza’s person and bunk could be searched. When Officer Delturco conducted a search of Esparza’s person and bunk, he found drug paraphernalia that included hollowed-out Q-tips filled with K2 paper, a melted hollowed-out pen, multiple razors that had been burnt on both ends, and multiple batteries that had burnt ends.

[7] In March 2022, the COS Coordinator filed with the trial court a petition to terminate Esparza’s participation in the Continuum of Sanctions program. The petition alleged that Esparza had violated the terms of his placement by possessing an illegal substance and smoking paraphernalia.<sup>1</sup>

[8] In April 2022, the trial court held an evidentiary hearing. At this hearing, the trial court heard the facts as set forth above. Additionally, Officer Delturco testified that the work release facility had had issues with participants using hollowed out Q-tips as smoking devices. Additionally, Officer Delturco

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<sup>1</sup> The petition also alleged that Esparza had violated the terms of work release by: (1) possessing contraband; (2) failing to follow a direct order from staff; (3) resisting work release officers; (4) being under the influence in the work release facility; and (5) being in arrears in the amount of \$1,159.09.

testified that K2 paper was “paper that gets chemicals sprayed on it[.]” (Tr. Vol. 2 at 10). Officer Delturco testified that participants would cut or tear off the cotton end of a Q-tip, then use a paperclip or something small to shove the K2 paper inside of the plastic tube of the Q-tip. Officer Delturco further testified that participants “usually lit [the Q-tip] with a lighter or burnt batteries and razors and then smoked [the Q-tip][.]” (Tr. Vol. 2 at 10). Finally, Officer Delturco testified that K2 paper was not allowed at the work release facility and using Q-tips, razors, and batteries to smoke K2 was prohibited.

[9] On cross-examination, Esparza asked Officer Delturco if he had any training identifying K2 paper, and Officer Delturco responded that he had “day-to-day training and experience[.]” (Tr. Vol. 2 at 15). Officer Delturco explained that when someone sprays paper with the K2 chemicals, the chemicals “show up differently” and that a person can “see the actual chemicals sprayed on the paper[.]” (Tr. Vol. 2 at 15). When Esparza asked Officer Delturco how he knew that the paper found on Esparza’s person and bunk was sprayed with K2 and not some other chemical, Officer Delturco responded, “I don’t have an answer.” (Tr. Vol. 2 at 17). At the conclusion of the hearing, the trial court found that based on the evidence presented, Esparza had violated the terms of his work release by possessing an illegal substance and smoking paraphernalia.<sup>2</sup> The trial court revoked the remainder of Esparza’s suspended sentence and

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<sup>2</sup> The trial court had also found that Esparza had violated his work release by failing to follow a direct order from work release staff, being under the influence at the work release facility, and being in arrears in the amount of \$1159.09.

ordered him to serve the remaining time in the Indiana Department of Corrections (“the DOC”).

[10] Esparza now appeals.

## Decision

[11] Esparza argues that there was insufficient evidence to support the revocation of his probation. We review a trial court’s probation violation determination for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances or when the trial court misinterprets the law. *Id.* When reviewing a trial court’s determination that a probation violation has occurred, we 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, 955 (Ind. Ct. App. 2005), *trans. denied.*

[12] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Id.* See also IND. CODE § 35-38-2-3(a). Indeed, violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). The State must prove the alleged violation by a preponderance of the evidence. I.C. § 35-38-2-3(f).

- [13] Esparza first argues that the State cannot rely on the testimony of Officer Delturco because he does not have the training or experience necessary to identify K2 paper. We disagree.
- [14] Our review of the record reveals that Officer Delturco testified that the work release facility was having problems with participants using K2. Additionally, Officer Delturco testified how he identifies K2 on paper and how participants typically ingest it. Officer Delturco testified that he has day to day experience dealing with K2 and used his experience to determine that the Q-tips scattered around Esparza's bunk contained K2. Specifically, Officer Delturco testified about the specific way in which someone would place K2 paper into a Q-tip, and recognized those modified Q-tips around Esparza's bunk. Thus, we find that the evidence supports, by the preponderance of the evidence, that Esparza had possessed an illegal substance. *Yoakum v. State*, 95 N.E.3d 169, 175 (Ind. Ct. App. 2018) (holding that an officer's testimony about his experience identifying a controlled substance was sufficient evidence), *trans. denied*.
- [15] Esparza also argues that "the testimony of the officers that what they saw was used [as] smoking paraphernalia should be rejected as pure subjective opinion." (Esparza's Br. 10). We disagree.
- [16] Our review of the record reveals that Officer Delturco discovered Q-tips with K2 paper inside of them scattered around Esparza's bunk on all sides and on his person. Additionally, Officer Delturco discovered a melted hollowed out pen, burnt razors, and burnt batteries around Esparza's bunk and on his person.

Officer Delturco testified at length about how these items were used to smoke K2. Esparza’s arguments amount to a request to reweigh the evidence, which we will not do. *See Sanders*, 825 N.E.2d at 955.

[17] Esparza also challenges the sufficiency of the allegation that he had been under the influence at the work release facility and that he had failed to follow a direct order from work release staff. However, violation of a single condition of probation is sufficient to revoke probation. *See Gosha*, 873 N.E.2d at 663. Thus, we decline to review these additional challenges. Therefore, we affirm the trial court’s revocation of Esparza’s placement in the work release program.

[18] Affirmed.<sup>3</sup>

Bradford, C.J., and Tavitas, J., concur.

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<sup>3</sup> Esparza also argues that the State’s failure to present the K2 and smoking paraphernalia as evidence at his revocation hearing was a due process violation. However, “[f]or offenses involving controlled substances, the State is not required to introduce the subject contraband to obtain a conviction for dealing or possession.” *See Yoakum*, 95 N.E.3d at 175 (internal quotation marks and citations omitted). While the best practice of identifying contraband may be through chemical analysis, it may also be identified through witness testimony and circumstantial evidence. *Id.*