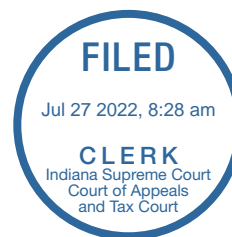


MEMORANDUM DECISION

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

Phillip E. Beeks, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2022

Court of Appeals Case No.
22A-CR-93

Appeal from the Huntington
Superior Court

The Honorable Jennifer E.
Newton, Judge

Trial Court Cause No.
35D01-1808-F6-208

Najam, Judge.

Statement of the Case

- [1] Phillip E. Beeks, Jr. appeals the trial court’s revocation of his probation. Beeks raises a single issue for our review, namely, whether the trial court abused its discretion when it revoked his probation. We affirm.

Facts and Procedural History

- [2] In late June 2018, Beeks entered into a contract with Jason and Natalie Cooper to put a new roof on their home. Beeks falsely told the Coopers that his business was Holbrooks Roofing and that he was fully insured. The Coopers wrote Beeks a check for half of the contract amount upfront, which Beeks cashed that same day.
- [3] On June 24, Beeks removed part of the old roof and left for the evening without weatherproofing the exposed area. Although he had told the Coopers he would return the next day before scheduled rain began, he did not, and the Coopers incurred substantial water damage inside their home. The Coopers eventually spent more than \$90,000 to repair their home. When they asked Beeks for his insurance information and refused to pay the remaining contract amount, Beeks told the Coopers that he “was not sure if [he] had any insurance.” Appellant’s App. Vol. 2 at 99.
- [4] The State charged Beeks with home improvement fraud, as a Level 6 felony, and with criminal mischief, as a Level 6 felony. In May 2019, Beeks pleaded guilty to home improvement fraud, as a Level 6 felony, and in exchange the State agreed to dismiss the charge of criminal mischief. Beeks’ plea agreement

expressly provided that he “shall pay restitution” to the Coopers and, “[o]therwise, sentencing shall be in the discretion of the Court” *Id.* at 96. After accepting Beeks’ plea agreement and holding a sentencing hearing, the trial court sentenced Beeks to two years, with 180 days executed and the remainder suspended to probation. The court ordered Beeks to pay restitution in a to-be-determined amount as a condition of Beeks’ probation. *Id.* at 107, 120.

[5] The court then held a separate restitution hearing in August. Following that hearing, the court found that the Coopers had suffered damages in the amount of \$90,536.14;¹ that Beeks had a weekly gross income of \$2,500; and that Beeks had the ability to pay the full amount of the Coopers’ damages as restitution. The court then ordered Beeks to pay the Coopers restitution in the total amount of their damages.

[6] The court’s restitution order did not set a monthly minimum payment. However, in reviewing his conditions of probation with his probation officer, Officer Michele Maher, Beeks stated that he could make \$500 monthly payments toward the restitution. Officer Maher agreed to accept \$500 as a minimum monthly payment but made clear to Beeks that the condition of his

¹ The Coopers did receive insurance payments for part of their damages, and the court’s restitution order directed Beeks to reimburse the Coopers’ insurance company for that same amount.

probation was for him to pay the full amount of the restitution by the end of his probationary period. Tr. Vol. 2 at 29-30.

[7] In December 2020, with two days left on his probation, Beeks had paid \$6,500 toward the restitution and still owed \$84,036.14. The State filed a notice of probation violation and alleged that Beeks' failure to pay the full restitution amount was a violation of the conditions of his probation.

[8] After several continuances, the court held a fact-finding hearing on the State's notice of violation in December 2021. Following that hearing, the court found that Beeks "has violated [p]robation by failing to pay restitution in full" *Id.* at 164. The court then extended Beeks' probation to December 14, 2022, and ordered him to either pay the remaining restitution balance by June 2022 or to pay \$6,500 per month toward the restitution balance. This appeal ensued.

Discussion and Decision

[9] Beeks appeals the trial court's revocation and extension of his probation. As our Supreme Court has made clear:

"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) (explaining that: "Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants."). A probation hearing is civil in nature, and the State must prove an alleged probation violation by a

preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind.1995); see Ind. Code § 35–38–2–3(f) (2012). When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if “there is substantial evidence of probative value to support the trial court’s conclusion that a probationer has violated any condition of probation.” *Braxton*, 651 N.E.2d at 270.

Murdock v. State, 10 N.E.3d 1265, 1267 (Ind. 2014).

[10] On appeal, Beeks asserts that the trial court abused its discretion when it found that he had violated the conditions of his probation because he made the \$500 monthly minimum payments to restitution. But that the probation department permitted Beeks to make payments of at least \$500 per month without a notice of violation being filed does not negate the fact that the trial court made the full payment of the restitution a condition of Beeks’ probation. Indeed, Beeks’ probation officer expressly informed Beeks of that condition when she agreed to accept the \$500 monthly minimum payments. Further, there is no question that Beeks came nowhere close to having the full restitution amount paid within two days of the original end-date for his probationary period.

[11] Beeks also asserts on appeal that the trial court abused its discretion when it revoked his probation because a criminal restitution order survives the expiration of probation. Be that as it may, Beeks cites no authority for his proposition that a trial court is required to allow probation to expire when an unsatisfied restitution order exists.

[12] Beeks also asserts that the \$6,500 monthly payment option is illusory because it would not discharge the restitution balance by December 2022. But, again, that the trial court wanted Beeks to make better progress on the restitution balance is not a basis for showing that the imposition of the \$6,500 monthly payment option was an abuse of the court's discretion.

[13] Finally, Beeks asserts that he cannot pay \$6,500 per month toward the restitution. But Beeks' argument here is framed around whether the State proved he could pay that amount, and in this respect his argument misses the mark. In the original restitution order, the court found that Beeks had the ability to pay the full restitution as a condition of his probation. In a hearing on the violation of such a condition, it is the burden of the defendant to show an inability to pay. *Smith v. State*, 963 N.E.2d 1110, 1113 (Ind. 2012). And Beeks' assertions in this regard on appeal are merely requests for our Court to reweigh the evidence, which we will not do. Therefore, the trial court did not abuse its discretion when it concluded that Beeks had failed to satisfy a condition of his probation and extended Beeks' probationary period to December 2022 so that Beeks could continue to pay on the restitution balance, and we affirm the trial court's judgment.

[14] Affirmed.

Bradford, C.J., and Bailey, J., concur.