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IN THE
COURT OF APPEALS OF INDIANA

Sidney Corey Kirkland,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 27, 2021

Court of Appeals Case No. 21A-CR-568

Appeal from the Hamilton Circuit Court

The Honorable Paul A. Felix, Judge

Trial Court Cause No. 29C01-1603-F5-2300

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Sidney Kirkland (Kirkland), appeals the trial court's Order revoking his probation.

[2] We dismiss without prejudice.

ISSUE

[3] Kirkland presents the court with one issue, but we find an issue raised by the State to be dispositive: Whether Kirkland, who admitted to violating the terms of his probation, may challenge the knowing, intelligent, and voluntary nature of his waiver of revocation counsel through this direct appeal.

FACTS AND PROCEDURAL HISTORY

[4] On July 20, 2017, pursuant to an agreement with the State, Kirkland pleaded guilty in Hamilton County to Level 5 felony operating a motor vehicle after forfeiture of license for life. Kirkland's plea agreement provided that he would be sentenced to five years, with two years executed and three years suspended to probation. On August 17, 2017, the trial court accepted Kirkland's guilty plea and sentenced him according to the terms of his plea agreement.

[5] On July 15, 2019, the State filed a petition to revoke Kirkland's probation in Hamilton County, alleging that he had committed the new offense in Johnson County of Level 5 felony operating a motor vehicle after forfeiture of license for life. On October 3, 2019, Kirkland was sentenced to two years in the

Department of Correction (DOC) for the new Johnson County offense. On March 18, 2021, the trial court held an initial hearing on the State's petition to revoke Kirkland's probation in Hamilton County. Kirkland appeared *pro se*. The trial court advised Kirkland of the allegations contained in the State's petition, his right to counsel in the revocation proceedings, and his right to have counsel appointed for him in the event he was found to be indigent. After engaging in a colloquy regarding Kirkland's trial rights and possible sanctions for violating his probation, the trial court asked Kirkland, "What do you want to do about an attorney?" to which Kirkland responded, "I would like to deny an attorney and go ahead and get this over with today if possible." (Transcript p. 8). The trial court then advised Kirkland regarding the dangers of self-representation, after which Kirkland indicated that he wished to proceed without an attorney.

[6] The trial court further questioned Kirkland about the waiver of his trial rights and the effect of his plea. Kirkland affirmed that no one had forced, threatened, or coerced him into admitting that he had violated his probation. Kirkland then admitted the violation and established a factual basis for that admission, after which the trial court again asked Kirkland if he wished to be represented by counsel prior to any probation revocation sanction being imposed. Kirkland responded, "No, sir. I just – I mean it's all true and I just want to get it taken care of and get on with the rest of my life." (Tr. p. 12). The trial court accepted Kirkland's admission and ordered that Kirkland execute 800 days of his previously-suspended sentence.

[7] Kirkland now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[8] Kirkland contends that the trial court's Order revoking his probation must be reversed because he did not knowingly, intelligently, and voluntarily waive his right to revocation counsel. However, Kirkland admitted that he had committed the new offense of Level 5 felony operating a motor vehicle after forfeiture of license for life, thus violating the terms of his probation. It has long been established that defendants who plead guilty may not challenge the validity of their plea on direct appeal but must, instead, pursue relief through post-conviction proceedings. *Tumulty v. State*, 666 N.E.2d 394, 395-96 (Ind. 1996). The *Tumulty* court recognized two main rationales for its decision: (1) to permit direct appeals of guilty pleas would negatively impact the finality of judgments and make settlements more difficult to achieve, and (2) post-conviction proceedings are specifically designed to allow an appellant an opportunity to establish the facts surrounding his guilty plea. *Id.* at 396.

[9] In *Huffman v. State*, 822 N.E.2d 656, 658-59 (Ind. Ct. App. 2005), this court concluded that a defendant challenging the validity of his or her admission to a probation violation must do so through a petition for post-conviction relief, not a direct appeal. In reaching that conclusion, we relied on *Tumulty* and its reasoning. We also relied upon Indiana Post-Conviction Rule 1(1)(a)(5), which provides for relief to any person who has been convicted of, or sentenced for, a crime and who asserts that his or her probation was unlawfully revoked, and on

Indiana Post-Conviction Rule 1(1)(b), which further contemplates that relief under the Post-Conviction Rules "'takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence and it shall be used exclusively in place of them.'" *Id.* at 659 (emphasis removed).

[10] Following *Tumulty* and *Huffman*, we conclude that Kirkland's appellate arguments are not properly before us and are more appropriately brought through a petition for post-conviction relief. Therefore, we dismiss his appeal without prejudice so that he may pursue post-conviction relief proceedings if he so chooses. *See Huffman*, 822 N.E.2d at 660; *see also Hoskins v. State*, 143 N.E.3d 358, 361 (Ind. Ct. App. 2020) (dismissing Hoskins' direct appeal claim that his waiver of counsel for probation revocation proceedings was not knowing, intelligent, and voluntary).

[11] We recognize that other panels of this court have elected to address direct appeal challenges to the validity of probation violation admissions. *See*, *e.g.*, *Sparks v. State*, 983 N.E.2d 221, 224 n.1 (Ind. Ct. App. 2013) (acknowledging *Tumulty* and *Huffman* but choosing to address the merits of Sparks' claims, noting that the issue of whether *Tumulty* applied to probation revocation remained "unsettled"). Our research also uncovered instances where this court addressed the merits of direct appeal challenges to the validity of admissions to probation violations where it appeared that the State did not raise the issue of whether a direct appeal was the appropriate vehicle for such a challenge. *See generally*, *Cooper v. State*, 900 N.E.2d 64 (Ind. Ct. App. 2009).

[12] Here, the State has raised the issue. In addition, although our supreme court has yet to directly address the issue of whether *Tumulty* applies to admissions to probation violations, it recently held in *J.W. v. State*, 113 N.E.3d 1202, 1204 (Ind. 2019), that juveniles may not challenge the validity of admissions to delinquency adjudications on direct appeal. Rather, the court held that the interests of finality in judgments, freedom of parties to settle disputes, and the need for factual development of claims favored extending *Tumulty* to the juvenile-law counterpart to a criminal plea. *Id*. at 1206-07. We see no reason why these interests are not equally applicable to cases involving admissions to probation violations, which, like juvenile delinquency adjudications, are civil in nature but present issues pertinent to criminal law. Our supreme court's decision in *J.W*. and the parity of interests involved convince us that *Huffman* and its progeny represent the more correct approach. Therefore, we dismiss Kirkland's appeal.

CONCLUSION

[13] Based on the foregoing, we conclude that Kirkland's claims are not properly before us and that he must pursue his claims through post-conviction proceedings, if at all.

[14] Dismissed without prejudice.

[15] Najam, J. and Brown, J. concur