MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Christopher Taylor-Price
Taylor-Price Law, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

George P. Sherman
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Garrison Byrd, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 13, 2023

Court of Appeals Case No. 22A-CR-2444

Appeal from the Parke Circuit Court

The Honorable Sam A. Swaim, Judge

Trial Court Cause No. 61C01-1708-F4-189

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Garrison Byrd, Jr., appeals the revocation of his probation. We dismiss his appeal.

Facts and Procedural History

[2] In 2018, Byrd pled guilty to level 4 felony child molesting. The plea agreement provided that he would be sentenced to 2,190 days, with 1,095 days suspended to probation. The trial court accepted the plea agreement and sentenced Byrd accordingly.

[3] In March 2021, the State filed a notice of probation violation alleging that Byrd violated his probation by failing to successfully complete a required sex offender treatment program and for being a "No Call, No Show" to probation for at least three months. Appellant's App. Vol. 2 at 96. A probation violation hearing was held in April 2021. Byrd's counsel appeared in person, and Byrd appeared remotely via Zoom from the Parke County Jail. Byrd admitted to violating his probation and entered into an agreed sanction that he would serve 120 days of his previously suspended sentence followed by a return to probation.

[4] Thereafter, on July 25, 2022, the State filed a second notice of probation violation alleging that Byrd tested positive for illegal drugs (THC/cannabinoids and methamphetamine and amphetamine) on several occasions. A hearing was held on August 18, 2022. Byrd appeared via Zoom and without counsel from jail. After informing Byrd of the alleged probation violations, the trial court advised Byrd as follows:

> You do have the right to an attorney on the violation. If you cannot afford your own attorney, one will be appointed to you. You have a right to a hearing where the State, the Prosecutor, that is, would be required to prove that you did knowingly or intentionally violate your probation. You're entitled to confront the witnesses against you and to bring forth and compel your own witnesses. If the Court does find that you did violate your probation, the Court could reinstate the remaining balance of your sentence, somewhere around eight hundred days could be reinstated, I believe, is what the time remaining is, maybe a little less. Do you understand the violation, the possible penalties and your rights, sir?

Tr. Vol. 2 at 26-27. Byrd stated that he understood his rights, waived his right to counsel, and informed the trial court that he wished to admit to the violation. Byrd admitted that he used methamphetamine and marijuana. The trial court accepted the admission and found that Byrd violated his probation. On September 14, 2022, the trial revoked Byrd's probation and ordered him to serve the remainder of his sentence in the Department of Correction. This appeal ensued.

Discussion and Decision

[5] Byrd challenges the validity of the trial court's revocation of his probation. We begin by noting that 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). Moreover, it is well-settled that a probation revocation proceeding "is in the nature of a civil action, and is not to be equated with an adversarial criminal proceeding." *Mathews v. State*, 907 N.E.2d 1079,

1081 (Ind. Ct. App. 2009). On appeal, Byrd specifically challenges the validity of his admission to his probation violation. He asserts that the trial court failed to adequately advise him of all his statutory rights during the revocation hearing, and further that the court violated due process in holding his hearing remotely. The State counters that Byrd has forfeited his right to direct appeal by admitting to his probation violation, and therefore we should dismiss this appeal. We agree with the State.

[6] Our supreme court has held that criminal defendants may not challenge the validity of a guilty plea to a criminal charge by way of a direct appeal. *Tumulty v. State*, 666 N.E.2d 394, 395-96 (Ind. 1996). The court has extended that holding to juveniles who admit to civil delinquency allegations. *J.W. v. State*, 113 N.E.3d 1202, 1206-07 (Ind. 2019). And other panels of this Court have held that our supreme court's precedent also applies to probationers who have admitted to alleged probation violations. *Kirkland v. State*, 176 N.E.3d 986, 988-89 (Ind. Ct. App. 2021); *see Dobrowolski v. State*, 186 N.E.3d 1168, 1171 (Ind. Ct. App. 2022) (holding that probationer "forfeited her right to directly appeal the finding she violated her terms of probation when she admitted the violation."); *Hoskins v State*, 143 N.E.3d 358, 361 (Ind. Ct. App. 2020) (concluding that challenge to validity of probation violation guilty plea must be presented by way of a petition for post-conviction relief); *Huffman v. State*, 822 N.E.2d 656, 660 (Ind. Ct. App. 2005) (direct appeal of validity of probation violation guilty plea dismissed without prejudice).

[7] As explained by the panel in *Kirkland*:

> [A]lthough 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.

176 N.E.3d at 989. Thus, in *Kirkland*, we dismissed the probationer's appeal "without prejudice so that he may pursue post-conviction relief proceedings if he so chooses." *Id*.

[8] Following this line of authority, we conclude that Byrd's argument on appeal is not properly before us.[1] We therefore dismiss his appeal without prejudice.

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[1] As noted in *Kirkland*, other panels of this Court have addressed the merits of improperly brought direct appeals from guilty pleas in probation revocations. 176 N.E.3d at 989 (citing *Sparks v. State*, 983 N.E.2d 221 (Ind. Ct. App. 2013), *aff'd on reh'g*, 985 N.E.2d 1140, and *Cooper v. State*, 900 N.E.2d 64 (Ind. Ct. App. 2009)). Those cases were decided before our supreme court extended *Tumulty* in *J.W.*, when we believe the issue of whether the rule in *Tumulty* should be extended to probation revocation proceedings remained more "unsettled." *Sparks*, 983 N.E.2d at 224. As for cases cited by Byrd in which more recent panels have addressed the merits of improperly brought direct appeals of admitted probation violations, *see, e.g., Saucerman v. State*, 193 N.E.3d 1028, 1031 (Ind. Ct. App. 2022), it appears in those cases that the State did not advocate for dismissal. The State did so here, and we decline to address the merits of this appeal.

[9] Dismissed.

Robb, J., and Kenworthy, J., concur.