

## 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.



---

### ATTORNEY FOR APPELLANT

Donald J. Frew  
Fort Wayne, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General

Tiffany A. McCoy  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Cory J. Brightharp,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 15, 2021

Court of Appeals Case No.  
20A-CR-2318

Appeal from the Allen Superior  
Court

The Honorable David M. Zent,  
Judge

The Honorable Samuel R. Keirns,  
Magistrate

Trial Court Cause No.  
02D06-1912-F6-1527

**Altice, Judge.**

## **Case Summary**

- [1] The trial court revoked Cory Brightharp's suspended sentence when it determined that he violated his probation by refusing to abide by the standard and special conditions. Brightharp argues that the evidence presented at the revocation hearing was insufficient to establish that he refused to abide by the conditions of his probation.
- [2] We affirm.

## **Facts & Procedural History**

- [3] On December 5, 2019, the State charged Brightharp with criminal recklessness and intimidation, both Level 6 felonies. On February 18, 2020, Brightharp was found guilty as charged by a jury. At the sentencing hearing on March 12, 2020, the trial court sentenced Brightharp to concurrent terms of two years and 183 days for criminal recklessness and two years for intimidation, with one year of each sentence suspended to probation. That same day, the trial court presented Brightharp with an order of probation, the terms of which included that he would behave well and report for supervision as instructed and that he would undergo a psychological evaluation and recommended treatment. Brightharp refused to sign the order of probation. Brightharp also refused to sign a no contact order at the sentencing hearing, which indicated that a violation of that order was punishable by a revocation of probation.

[4] At his September 2020 probation intake appointment, Brightharp refused to sign both the probation order and a release of information consent form, which were provided by his probation officer Melanie Cork. He indicated that he was not going to sign the documents because “he’s taken many criminal justice classes and so he knows his rights and that he does not have to sign it.”

*Transcript Vol. I* at 13.

[5] After Brightharp refused to sign the forms, Cork filed a notice to appear on September 29, 2020. The notice informed Brightharp that a petition for probation revocation had been prepared to be filed with the trial court and that he was ordered to appear at a hearing on October 2, 2020. The notice additionally stated that failure to appear would result in the petition being filed, which could lead to revocation of his suspended sentence. Brightharp refused to sign the notice to appear.

[6] When Brightharp did not appear for the October 2, 2020 hearing, Cork filed the petition to revoke his probation in open court. The petition alleged that Brightharp violated the rules and conditions of his probation by “refus[ing] to abide by the standard and special conditions of probation.” *Appellant’s Appendix Vol. II* at 201.

[7] At the contested probation revocation hearing on December 4, 2020, Brightharp admitted that he refused to sign several documents regarding probation and that he was told if he did not sign the forms that he would be required to go before the trial court on the issue. He testified that he was assured that he would be

fine despite not signing the papers. Cork testified that Brightharp refused to sign the order of probation at his sentencing on March 12, 2020, and again at his probation intake appointment in September 2020. Brightharp also refused to sign a release of information consent form for a psychological evaluation, which was a special condition of his probation. Cork testified that a signed consent form is required in order to perform a psychological evaluation and receive treatment.

- [8] The trial court found that Brightharp violated the conditions of his probation by refusing to sign the necessary paperwork to fulfill the special condition that he undergo a psychological evaluation and treatment. The trial court explained to Brightharp that probation was a privilege granted to him and that Brightharp had “indicated [he] [has] no desire to comply with those conditions.” *Transcript Vol. I* at 32. The trial court revoked Brightharp’s probation and ordered him to serve his previously suspended sentence. Brightharp now appeals.

## **Discussion & Decision**

- [9] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The conditions for probation and determination of violations when those conditions are unmet are left to the discretion of the trial court. *Id.* Insufficiency of evidence claims in a probation proceeding are reviewed the same as any other sufficiency of the evidence question. *Smith v. State*, 727 N.E.2d 763, 765 (Ind.

Ct. App. 2000). “Evidence of a single probation violation is sufficient to sustain the revocation of probation. *Id.* at 766. A probation hearing is civil in nature and the State need only prove the alleged probation violations by a preponderance of the evidence. Ind. Code § 35-38-2-3(f). The reviewing court considers only the evidence most favorable to the trial court’s judgment and does not reweigh the evidence or judge the credibility of witnesses. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). If substantial evidence of probative value supports the trial court’s decision that a defendant violated any terms of probation, we will affirm. *Id.*

[10] Brightharp contends that the evidence presented indicates that he did not want to sign documents unless he was “legally obligated to do so to avoid further incarceration.” *Appellant’s Brief* at 12. He argues that “he was never given a fair opportunity to begin probation” and that his opportunity to partake in probation was lost before the probation supervision began. *Id.* We disagree.

[11] “A defendant’s probationary period begins immediately after sentencing.” *Baker v. State*, 894 N.E.2d 594, 597 (Ind. Ct. App. 2008). Our Supreme Court expressly concluded that “[p]robation may be revoked at any time for a violation of its terms,” which “includes revocation prior to the start of probation.” *Champlain v. State*, 717 N.E.2d 567 (Ind. 1999). Here, Brightharp was sentenced on March 12, 2020. Later that day, Brightharp refused to sign the order of probation and a no contact order, both of which indicated that violations would be punishable by a revocation of probation.

[12] Brightharp's later refusal to sign a consent for release of information form directly thwarted the special condition that he undergo a psychological evaluation and treatment. This prompted his probation officer to file a notice to appear, which expressly stated that his failure to appear would result in the petition being filed and possible revocation of his probation. Brightharp refused to sign the notice, and his absence from the courtroom when his case was called resulted in the verified petition being filed.

[13] The State established by a preponderance of evidence that Brightharp violated the terms of his probation by repeatedly refusing to sign documents required as a matter of probation. His argument that he was never given a fair opportunity to begin probation is unfounded because our well-established precedent clearly provides that the probationary period begins immediately after sentencing. His refusal to sign the psychological evaluation consent form hindered the fulfillment of the special condition that he would undergo an evaluation and treatment. Accordingly, the evidence is sufficient to support the trial court's revocation of Brightharp's probation.

[14] Affirmed.

Kirsch, J. and Weissmann, J., concur.