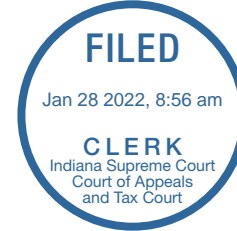


MEMORANDUM DECISION

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

Joseph Edminster,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 28, 2022

Court of Appeals Case No.
21A-CR-1889

Appeal from the Howard Superior
Court

The Honorable William C.
Menges, Jr., Judge

Trial Court Cause No.
34D01-1402-FD-77

Weissmann, Judge.

[1] Joseph Edminster absconded from a re-entry court program for five years while on probation for Class D felony possession of a controlled substance. As a sanction for the probation violation, the trial court reinstated the 130-day balance of Edminster's suspended prison sentence. Edminster now appeals, arguing that he received ineffective assistance of counsel at his probation revocation hearing. Because probation revocation hearings are civil proceedings, we apply a due process standard for evaluating his counsel's effectiveness. Edminster does not establish a violation of that standard. We therefore affirm.

Facts

[2] In 2014, Edminster pleaded guilty to Class D felony possession of a controlled substance. The trial court sentenced him to 730 days in prison, with credit for 148 days served and the remaining 538 days suspended to probation.

[3] In 2015, Edminster admitted to repeatedly violating his probation by failing to appear for drug screens, testing positive at others, and being discharged from an alcohol and drug treatment program for non-compliance. As sanctions for these violations, the trial court extended Edminster's probation by 183 days and reinstated 10 days of his suspended prison sentence.

[4] In 2016, Edminster again admitted to violating his probation, this time by committing Level 6 felony intimidation. *See* Cause No. 34C01-1508-F6-127 (Cause 127). As a sanction, the trial court extended Edminster's probation by another 183 days and ordered him to complete a re-entry court program. But

shortly after entering the program, Edminster absconded from the re-entry court for five years. When he was finally arrested in 2021, the re-entry court terminated his participation in the program, and the probation department moved to revoke his probation.

[5] At his probation revocation hearing, Edminster admitted to violating the terms of his probation by failing to complete the re-entry court program. This exchange between the trial court, Edminster's attorney, and Edminster followed:

[Court]: Sir, any evidence you wish to offer in the matter of sentencing, Mr. Dabrowski?

[Attorney]: Uh, not evidence, just recommendation Judge. My uh, client after considering his options would like the Court to consider to place him on In Home Detention. If that's not available, to place him on Work Release, but a, his preference would be to be on In Home in order to complete his sentence.

[Court]: Does your client wish to make an unsworn statement uh Mr. Dabrowski?

[Attorney]: Mr. Edminster (sic) would you like to address the Court?

[Edminster]: Uh, Your Honor, I would just like to say that I have changed my life for two years and it's as you know with (INAUDIBLE) in 2016, and I'm just trying to do better with my life and I'm asking you to give me an opportunity on In Home Detention to better myself.

Tr. Vol. II, p. 5.

[6] The trial court sanctioned Edminster for the probation violation by reinstating the 130-day balance of his suspended prison sentence. Edminster appeals.

Discussion and Decision

[7] Edminster argues that he received ineffective assistance of counsel because his attorney failed to present mitigating evidence during the penalty phase of his probation revocation hearing. Relying on the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984), Edminster claims his attorney's performance was both deficient and prejudicial. But *Strickland* concerns a criminal defendant's right to counsel under the Sixth Amendment to the United States Constitution. *See* 466 U.S. at 684-85. Probationers, like Edminster, are not criminal defendants, and their right to counsel at revocation hearings arises from Indiana Code § 35-38-2-3(f), not the Sixth Amendment. Thus, *Strickland* does not apply to Edminster's claim. *See Gibson v. State*, 154 N.E.3d 823, 826 (Ind. Ct. App. 2020).

[8] As the State correctly asserts, probation revocation hearings are civil proceedings in which the right to counsel flows from the Due Process Clause of the Fourteenth Amendment. *Id.* (citing *A.M. v. State*, 134 N.E.3d 361, 365 (Ind. 2019)). We therefore apply a due process standard in evaluating the effectiveness of Edminster's counsel. *See id.* The due process standard "essentially asks whether counsel represented the client in a procedurally fair proceeding that yielded a reliable judgment from the trial court." *A.M.*, 134

N.E.3d at 365 (citing *Childers v. State*, 656 N.E.2d 514, 517 (Ind. Ct. App. 1995)). We answer that question affirmatively here.

[9] The record reveals that counsel appeared at Edminster's probation revocation hearing and recommended alternative placements to prison as a sanction for Edminster's probation violation. Edminster also made a statement to the trial court in support of in-home detention as his preferred placement. As there is no sign of procedural unfairness and no indication that the trial court's judgment is unreliable, Edminster has failed to establish that he received ineffective assistance of probation-revocation counsel.

[10] The trial court's judgment is affirmed.

Najam, J., and Vaidik, J., concur.