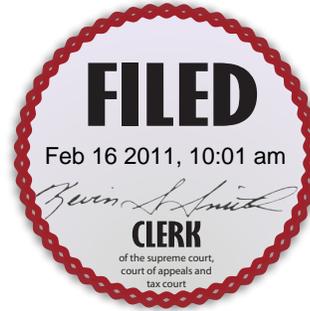


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY ALLEN ANDERSON,)

Appellant-Defendant,)

vs.)

No. 48A05-1007-CR-436)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David A. Happe, Judge
Cause No. 48E01-0801-FD-003

February 16, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Timothy Allen Anderson (“Anderson”) appeals from the revocation of his probation, presenting the single issue of whether the trial court abused its discretion in imposing this sanction.

We affirm.

Facts and Procedural History

On February 19, 2007, Anderson was determined to be a habitual traffic violator, which resulted in suspension of his driving privileges for ten years. On January 2, 2008, Anderson was charged with Possession of a Controlled Substance, as a Class D felony¹, and Public Intoxication, as a Class B misdemeanor.² On January 27, 2009, Anderson pled guilty to these charges and was sentenced to concurrent sentences of twenty-four months imprisonment for Possession of a Controlled Substance and six months imprisonment for Public Intoxication. Six months of his sentence were to be executed, with the remaining eighteen months suspended to probation. Among the conditions of Anderson’s probation was the requirement that he abstain completely from the use of alcohol or illicit drugs, submit to and pay for breath or urine testing for such substances on three hours’ notice, commit no further offenses, and comply with the residence and monitoring requirements for in-home detention for six months after beginning probation.

After being released on probation, Anderson submitted to a urine test on February 11,

¹ Ind. Code § 35-48-4-7(a).

² I.C. § 7.1-5-1-3.

2010. Anderson's urine tested positive for cannabinoids in an amount indicating that Anderson had used marijuana within sixty days prior to collection of the urine sample. As a result of this violation, a Notice of Violation of Executed/Suspended Sentence was filed with the court on February 19, 2010, and a Summons was issued to Anderson. On March 3, 2010, an Amended Notice of Violation was issued because Anderson had failed to comply with the requirements for establishing a residence and monitoring for in-home detention.

On April 30, 2010, Officer Brian Gehrke ("Officer Gehrke") of the Anderson Police Department saw Anderson driving a Toyota Corolla down a road "over the center lane." (Tr. 26.) Officer Gehrke pulled Anderson over and requested identification. Anderson stated that his name was Alan Lincoln Anderson and alternately claimed to have Indiana and Georgia driver's licenses; when these names did not return valid results from police computers, Anderson provided his true name. After checking Anderson's name in police computers and discovering a possible warrant and his habitual traffic offender status, Officer Gehrke arrested Anderson. As a result of this incident, a Second Amended Notice of Violation was filed on May 5, 2010, noting that the State alleged Anderson had committed Operating a Vehicle as a Habitual Traffic Offender, a Class D felony, and False Informing, a Class B misdemeanor. A warrant for Anderson's arrest was issued thereon.

An evidentiary hearing regarding Anderson's violations was held on June 15, 2010. At the conclusion of this hearing, the court found Anderson to have violated the terms of his probation. The court terminated Anderson's at-home detention privileges, revoked his probation, and sentenced him to imprisonment with the Indiana Department of Correction.

This appeal followed.

Discussion and Decision

Anderson argues that the trial court abused its discretion when it revoked his probation. We review a trial court's decision to revoke probation for an abuse of discretion, which occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Whatley v. State, 847 N.E.2d 1007, 1009 (Ind. Ct. App. 2006). Because a probation revocation hearing is in the nature of a civil proceeding, the State must prove an alleged probation violation only by a preponderance of the evidence. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied. In reviewing the revocation of probation, we neither reweigh evidence nor assess the credibility of witnesses. Terrell v. State, 886 N.E.2d 98, 100 (Ind. Ct. App. 2008) (citing Piper v. State, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), trans. denied), trans. denied.

Anderson's probation was revoked because 1) he tested positive for use of marijuana while on probation; 2) he failed to timely comply with the requirements for at-home detention; and 3) he was charged with a Class D felony and a Class B misdemeanor. Anderson admitted to having used marijuana when he appeared before the court in a hearing on February 11, 2010, and told the judge that his urine results would be "dirty." (Tr. 35.) A laboratory report confirmed this. Anderson admitted, and Kelsey Carter, a probation officer with the Madison County Unified Courts, testified that Anderson did not comply with the requirements for establishing in-home detention. Finally, Officer Gehrke testified and Anderson admitted that he was driving when Officer Gehrke arrested him, and Anderson

admitted that he gave a false name and information about his driving privileges to Officer Gehrke.

Under these circumstances, we do not find that the trial court abused its discretion in revoking Anderson's probation. Anderson's claims that some of his violations were merely "technical in nature" (Appellant's Br. 4) and that he had generally made good-faith efforts to comply with probation and in-home detention amount to a request that we reweigh the evidence, which we will not do. Terrell, 886 N.E.2d at 100.

Affirmed.

NAJAM, J., and DARDEN, J., concur.