

STATEMENT OF THE CASE

Barry Johnson appeals the trial court's revocation of his probation. Johnson raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve the remainder of his sentence after it revoked his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 24, 2006, Johnson pleaded guilty to robbery, as a Class B felony; criminal confinement, as a Class B felony; intimidation, as a Class C felony; and battery, as a Class C felony. Pursuant to his plea agreement, Johnson received an aggregate sentence of twelve years, with eight years executed and four years suspended to probation.

On October 27, 2008, Johnson was ordered into the Community Transition Program. As part of that program, Johnson was admitted into the Reentry Court and placed on home detention. On February 21, 2009, he was released from home detention and placed on formal probation.

On June 1, 2009, the State filed a notice of probation violation, alleging that Johnson had failed to appear for a mandatory drug screen and that he had been terminated from the Reentry Court for failure to report. On June 25, the trial court found that Johnson had violated the terms of his probation but sentenced him to time served and ordered him to be readmitted to the Reentry Court.

On October 26, 2009, the State filed a second notice of probation violation, which alleged that Johnson had been arrested for driving with a suspended license. On March 18, 2010, the State filed an addendum to its notice, alleging that Johnson had also been

terminated from the Milestone drug and alcohol program, had not reported to the Reentry Court as required, and had violated his curfew.

On April 12, 2010, the trial court held a probation revocation hearing. Johnson did not dispute the State's evidence against him at that hearing, and the court found that he had violated the terms of his probation. On May 10, the court held a dispositional hearing, and on May 17 the court ordered Johnson to serve the remainder of his suspended sentence. This appeal ensued.

DISCUSSION AND DECISION

Johnson appeals the trial court's order that he serve the remainder of his sentence following the revocation of his probation. The due process requirements of a probation revocation proceeding, and our standard of review, are well-established:

When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), trans. denied. Probation is a favor granted by the State, not a right to which a criminal defendant is entitled. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). However, once the State grants that favor, it cannot simply revoke the privilege at its discretion. *Id.* Probation revocation implicates a defendant's liberty interest, which entitles him to some procedural due process. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 2600-2601, 33 L.Ed.2d 484 (1972)). Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding. *Id.*

The minimum requirements of due process include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as

to the evidence relied on and reasons for revoking probation. Id. (citing Morrissey, 408 U.S. at 489, 92 S.Ct. at 2604).

Probation revocation is a two-step process. Id. First, the court must make a factual determination that a violation of a condition of probation actually has occurred. Id. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Id. Indiana has codified the due process requirements at Ind. Code § 35-38-2-3 by requiring that an evidentiary hearing be held on the revocation and providing for confrontation and cross-examination of witnesses and representation by counsel. Id.; see also Ind. Code § 35-38-2-3(d), (e). When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. Parker, 676 N.E.2d at 1085 [citing Morrissey, 408 U.S. at 490, 92 S.Ct. 2593; United States v. Holland, 850 F.2d 1048, 1050-51 (5th Cir. 1988)]. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. Id. In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. Id. at 1086[] n. 4.

Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006).

Here, Johnson does not contest either that he received the necessary procedural safeguards or that the State presented sufficient evidence to revoke his probation. Rather, Johnson's only contention on appeal is as follows:

The facts and circumstances presented by Johnson at the hearing to revoke his probation show that he had been making progress toward overcoming his addiction[,] moving to the 2nd phase of the Milestone program, and had successfully completed the Grace House program. The loss of his home due to a domestic dispute [after which his wife kicked him out] created a situation that resulted in Johnson's missing meetings; his lack of income caused him to be removed from the Milestone program. Because of his progress within the programs, the trial court's decision to impose Johnson's entire remaining suspended sentence was an abuse of discretion.

Appellant's Br. at 5.

Johnson's argument on appeal is merely a request for this court to reweigh the evidence that was before the trial court, which we will not do. Johnson had been given a

second opportunity to comply with the requirements of his probation after he was found in violation in June of 2009, yet he still failed to meet those requirements. As the State notes, the trial court was not obliged to give him a “third chance.” Appellee’s Br. at 6. Thus, we cannot say that the trial court’s order that Johnson serve the balance of his sentence was an abuse of the court’s discretion.

Affirmed.

DARDEN, J., and BAILEY, J., concur.