



## STATEMENT OF THE CASE

Rick D. Roberson appeals from the trial court's revocation of his probation. Roberson raises a single issue for our review, which we restate as whether the court's order revoking his probation is supported by sufficient evidence.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On October 10, 2007, Roberson pleaded guilty to criminal recklessness, as a Class D felony, pursuant to a plea agreement. The trial court sentenced Roberson to 545 days, all of which were suspended to probation.

On April 2, 2008, the State filed its notice of probation violation. On June 6 the State filed an amended notice. And on September 23, 2008, the State filed a second amended notice of probation violation. The September 23, 2008, notice alleged, among other things, that, "on or about 9/4/08, [Roberson] was arrested and charged with Resisting Law Enforcement" as a Class A misdemeanor. Appellant's App. at 55.

On October 16, 2008, the trial court held a hearing on the State's notices, and Roberson was represented by counsel. That hearing opened with the following colloquy:

**THE COURT:** Mr. Roberson, you're on the calendar for a probation violation hearing. Mr. Lorenz, you were appointed on September 11th [to represent Roberson]. The defendant was convicted of criminal recklessness, and the new allegations were a September 4th arrest for resisting law enforcement; is that d[is]posed of?

**MR. R. ROBERSON:** I took it to trial and I lost the trial.

**THE COURT:** You lost?

**MR. R. ROBERSON:** Yeah.

**THE COURT:** You got convicted?

**MR. R. ROBERSON:** Yes, ma'am.

**THE COURT:** Okay. What was your sentence?

**MR. R. ROBERSON:** Time served.

**THE COURT:** . . . The Court will find the defendant in violation of probation. . . .

Transcript at 7-8. The court then ordered Roberson to serve his suspended time less credit for time served. This appeal ensued.

### **DISCUSSION AND DECISION**

Roberson challenges the trial court's revocation of his probation. We review a trial court's decision to revoke probation under an abuse of discretion standard. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied. A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Jones, 838 N.E.2d at 1148.

Here, Roberson argues that “[n]o sworn testimony or documentary evidence was offered by the State to establish any of the probation violations alleged . . . .” Appellant’s Brief at 5. More specifically, Roberson asserts that his statement that he was convicted of resisting law enforcement was not sworn and, therefore, the trial court could not have relied on it in revoking his probation. Roberson also notes that the State did not present any additional evidence supporting its request to revoke his probation. The State responds with the unusual suggestion that Roberson did not preserve his appeal because he did not object to his own statements to the trial court.

Indiana Code Section 34-45-1-2 states that, “[b]efore testifying, every witness shall be sworn to testify the truth, the whole truth, and nothing but the truth.” See also Ind. Evidence Rule 603. It is not disputed by the State that the trial court did not administer that oath to Roberson before Roberson made his statements to the trial court. Nonetheless, it is well established that “the statutory requirement that testimony be given under oath or affirmation may be waived by failing to object.” Griffith v. State, 898 N.E.2d 412, 414 (Ind. Ct. App. 2008) (discussing Sweet v. State, 498 N.E.2d 924, 926 (Ind. 1986); Pooley v. State, 116 Ind. App. 199, 202-03, 62 N.E.2d 484, 485 (1945)); see also Evid. R. 103(a)(1). Here, the right to object to Roberson’s statements lay with the State as the opposing party, not, as the State presumes on appeal, with Roberson. Not surprisingly, the State chose not to exercise that right at trial, and Roberson lacks standing on appeal to claim error on the State’s behalf.

As noted above, immediately after opening the hearing on the State’s notice of probation violation, the trial court asked the parties about the status of the resisting law

enforcement charge against Roberson. Roberson, while represented by counsel and without prompting by the trial court, freely informed the court that he had been convicted of that charge. And once Roberson admitted to the violation, the State no longer carried the burden of presenting evidence to support its petition to revoke Roberson's probation. Thus, if either the State or the trial court erred in relying upon Roberson's unsworn and unprovoked admission in open court, on appeal Roberson cannot take advantage of those errors. See Wright v. State, 828 N.E.2d 904, 907 (Ind. 2005) ("Under th[e] doctrine [of invited error], a party may not take advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct.") (citations and quotations omitted).

We also briefly note that Roberson does not challenge either the conditions of his probation or the sentence he received upon the revocation of his probation. And we do not consider Roberson's statement that the "probation revocation hearing was not the type required by Ind. Code § 35-38-2-3 and federal due process." Appellant's Brief at 7. Such a statement does not satisfy our requirement for cogent argument. See Ind. Appellate Rule 46(A)(8)(a).

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.