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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES FRAWLEY,)

Appellant-Defendant,)

vs.)

No. 48A05-0605-CR-280)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0403-FB-166

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant James Frawley (“Frawley”) appeals the trial court’s order revoking his probation and ordering the execution of his ten-year sentence for Sexual Misconduct with a Minor, a Class B felony.¹ We affirm.

Issue

Frawley presents a single issue for review: whether he was erroneously denied his right of confrontation when an affidavit disclosing drug screen results was admitted into evidence at the probation revocation hearing.

Facts and Procedural History

On June 14, 2004, Frawley pleaded guilty to Sexual Misconduct with a Minor. On June 28, 2004, he was sentenced to ten years imprisonment. The sentence was suspended and Frawley was placed on probation. As a condition of his probation, Frawley was ordered to refrain from the use of illegal drugs.

On March 20, 2006, the State filed a Notice of Probation Violation, alleging that Frawley violated the terms of his probation by testing positive for cannabinoids. On April 17, 2006, the trial court conducted a hearing, found that Frawley had violated a term of his probation, and ordered the execution of Frawley’s previously suspended sentence. He now appeals.

Discussion and Decision

At Frawley’s probation revocation hearing, parole officer Tony New (“New”) testified as the sole witness for the State. New testified regarding the administration of Frawley’s

drug test and the subsequent custody of the sample. At the conclusion of New's testimony, the State submitted an affidavit from Jeff Retz ("Retz"), the Scientific Director at Witham Memorial Hospital Toxicology Laboratory located in Lebanon, Indiana. The affidavit, which included Retz's conclusion that Frawley had used marijuana within the preceding sixty days, was admitted into evidence without objection from Frawley. He now contends that the admission of such hearsay evidence was "fundamental error" because he could not confront his accuser and the State did not demonstrate that Retz was unavailable. Appellant's Brief at 7.

"[P]robationers are not entitled to the full array of constitutional rights afforded defendants at trial." Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). However, certain due process rights inure to a probationer at a revocation hearing. Id. These include written notice of the claimed violations, disclosure of the evidence against him, an opportunity to be heard and present evidence, the right to confront and cross-examine witnesses, and a neutral and detached hearing body. Id.

Probation revocation procedures are flexible, and not to be equated with an adversarial criminal proceeding. Id. at 550. Accordingly, strict rules of evidence do not apply. Id. See also Ind. Evidence Rule 101(c)(2) (providing in relevant part "[t]he rules, other than those with respect to privileges, do not apply in ... [p]roceedings relating to ... sentencing, probation, or parole.") As such, "in probation and community corrections placement revocation hearings, judges may consider any relevant evidence bearing some substantial indicia of reliability." Id. at 551. This includes reliable hearsay. Id.

¹ Ind. Code § 35-42-4-9(A)(1).

In Cox, the Court acknowledged that the challenged exhibit - urine test results from the Witham Memorial Hospital Toxicology Laboratory - constituted hearsay but determined that the admission of such hearsay evidence did not deny the probationer his due process rights and was not erroneous. See id. The Court clarified, “[w]e find that the use in a probation revocation hearing of a regular urinalysis report prepared by a company whose professional business it is to conduct such tests does not infringe upon a probationer’s confrontation rights.” Id. at 550, n.8.

Contemporaneously, in Carter v. State, 706 N.E.2d 552 (Ind. 1999), the Court considered a probationer’s allegation that urinalysis results were admitted at his probation revocation hearing absent qualified expert testimony. The Court restated the holding of Cox (“we make clear that in probation revocation hearings, judges may consider any relevant evidence bearing some substantial indicia of reliability”) and concluded “[g]iven the evidentiary standards applicable to probation revocation proceedings, we find no basis for reversing the trial court’s admission of the test results.” Id. at 554.

Accordingly, the affidavit disclosing Frawley’s urinalysis results was admissible if it bore substantial indicia of reliability. Retz executed the affidavit before a Notary Public. His sworn statements revealed the following information: Retz is the Scientific Director at Witham Memorial Hospital Toxicology Laboratory. Witham Memorial Hospital is accredited. Retz holds a chemistry degree from Illinois State University and has fifteen years experience as a laboratory supervisor. The toxicology laboratory at Witham Memorial Hospital has performed thousands of “drug screens.” (Ex. 1.) Retz disclosed, under oath,

that Frawley tested positive for the presence of cannabinoids. He then concluded, under oath, that Frawley “would have had to use marijuana some time in the 60 days prior to collection.” (Ex. 1.) Given the evidentiary standards applicable to probation revocation proceedings, Frawley has demonstrated no error in the admission of the affidavit.

Affirmed.

VAIDIK, J., and BARNES, J., concur.