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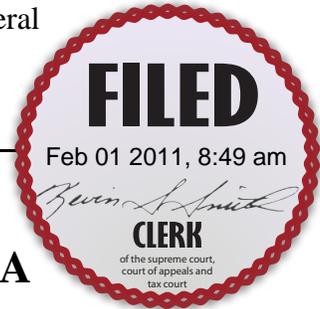
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSHUA HOOTEN, )

Appellant-Respondent, )

vs. )

No. 49A02-1006-CR-684

STATE OF INDIANA, )

Appellee-Petitioner. )

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APPEAL FROM THE MARION SUPERIOR COURT  
CRIMINAL COURT, ROOM 6  
The Honorable Mark D. Stoner, Judge  
Cause No. 49G06-0803-FC-58822

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**February 1, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, Joshua Hooten (Hooten), appeals the trial court's revocation of his probation.

We affirm.

## ISSUE

Hooten raises one issue on appeal, which we restate as follows: Whether the State produced sufficient evidence to prove by a preponderance of the evidence that he violated the terms of his probation.

## FACTS AND PROCEDURAL HISTORY

On March 13, 2008, the State filed an Information charging Hooten with Count I, forgery, a Class C felony, Ind. Code § 35-43-5-2, and Count II, theft, a Class D felony, I.C. § 35-43-4-2. On January 6, 2009, Hooten waived his right to a trial by jury, and, following a bench trial on February 11, 2009, the trial court convicted him on both Counts. On March 26, 2009, the trial court sentenced Hooten to three years for forgery and one year for theft, with sentences to run both concurrently and suspended. In addition, the trial court ordered Hooten to serve 730 days of probation. As conditions of his probation, Hooten agreed to report as directed to the probation department, maintain a single, verifiable residence, notify his probation officer of any change of address, and submit to drug and alcohol testing.

According to Hooten's probation officer, Elicia Peggins (Peggins), Hooten was required to report to her once a month but failed to meet with her after July 16, 2009. When Hooten failed to report to her after his July 16, 2009 meeting, Peggins sent him failure to

report letters, called him, and visited his home twice. In September of 2009, she went to the address that he had provided to her, and his aunt told her that Hooten did not live there. Peggins then visited again in November of 2009, and Hooten's grandmother repeated his aunt's statements that Hooten did not live there. Peggins did not verify the identities of either Hooten's aunt or grandmother, but Hooten's aunt was on home detention at the residence at the time.

In addition to failing to report, Hooten also failed to provide a copy of his urine drug screens. In setting the terms of Hooten's probation, the trial court allowed Peggins to accept drug screens from Hooten's employer, Local Carpenters Union 364, or from the probation department's drug lab. However, in order for Hooten to provide drug screens from his employer, he had to sign a consent form and provide Peggins with the drug screens. According to Peggins, Hooten never came in to sign the consent form and never provided his drug screens. He also failed to report to the probation department's drug lab for drug screening there.

On February 9, 2010, the State filed its notice of probation violation alleging that Hooten (1) failed to report to probation as directed; (2) failed to provide probation with a copy of urine drug screens; (3) failed to comply with court ordered community service work; (4) failed to make payments towards his court ordered financial obligation, including \$1,100.00 in restitution to Chase Bank; and (5) failed to report an accurate address. On May 13 and 27, 2009, the trial court held evidentiary hearings on the State's petition. At the conclusion of evidence, the trial court determined that Hooten had failed to report to

probation, provide urine drug screens, and report an accurate address. The trial court also determined that the State had failed to establish sufficient evidence to prove the other allegations in its notice of probation violation. Subsequently, the trial court imposed on Hooten a sentence of two years in the Indiana Department of Correction.

Hooten now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

In a probation revocation hearing, the State must prove a violation of probation by a preponderance of the evidence. I.C. § 35-38-2-3. On appeal, then, the trial court's revocation of a defendant's probation is reviewed under an "abuse of discretion" standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). A trial court has abused its discretion when its decision is clearly against the logic and effect of the facts and circumstances. *Id.* at 188. In determining whether the trial court abused its discretion, this court does not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. *Mogg v. State*, 918 N.E.2d 750, 755 (Ind. Ct. App. 2009).

Here, Hooten concedes that the State proved by a preponderance of the evidence that he failed to report to his probation officer. He argues, however, that the State did not prove that he failed to fax his drug screens because he provided them to his employer, and it would be unfair to revoke his probation based upon his employer's subsequent failure to fax them to his probation officer. He also argues that Peggins' testimony regarding her interactions with his aunt and grandmother during her home visit was inappropriate hearsay.

We do not need to address Hooten's arguments here. In the past, this court has characterized probation as "a matter of grace and a conditional liberty, which is a favor, not a right." *Johnson v. State*, 659 N.E.2d 194, 198 (Ind. Ct. App. 1995). As such, a violation of any condition of probation is sufficient to sustain a probation revocation. *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008) (emphasis added). Here, Hooten concedes that he failed to report to his probation officer every month, which is a violation of the terms and conditions of his probation. As a result, the trial court had sufficient evidence to revoke his probation and did not abuse its discretion. Therefore, it is not necessary for us to further address the merits of Hooten's arguments.

#### CONCLUSION

Based on the foregoing, we conclude that the trial court properly revoked Hooten's probation.

Affirmed.

ROBB, C.J., and BROWN, J., concur.