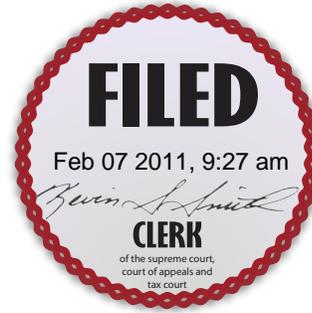


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

CARA SCHAEFER WIENEKE
Special Assistant to the State Public Defender
Wieneke Law Office, LLC
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

BRIAN REITZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DALE G. CATRON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 24A05-1007-CR-535

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0510-FD-964

February 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Dale G. Catron's probation was revoked after he stopped paying restitution. At the probation revocation hearing, Catron presented some evidence that his medical condition made it difficult for him to maintain employment. However, this evidence was somewhat vague, and the trial court was not required to credit it. In addition, there was evidence that Catron spent a substantial sum of money on unaccounted for expenses. Therefore, we conclude that the trial court did not abuse its discretion by revoking Catron's probation.

Facts and Procedural History

On October 26, 2005, the State charged Catron with class D felony theft, alleging that he had stolen money from the Brookville American Legion. On June 6, 2007, Catron pled guilty, and on June 28, 2007, he was sentenced to three years with one year suspended to probation. Catron was ordered to pay restitution to the Brookville American Legion in the amount of \$139,259.

Catron began the probationary portion of his sentence on June 4, 2008. He began working as a certified nurse's aide at Woodland Hills nursing home. After a while, he transferred to Brookville Health Care. Catron began to have difficulty reporting to work because he purportedly suffered from anxiety and was afraid to leave home, and he lost his job at Brookville Health Care. He then worked as a certified nurse's aide for Liberty Matrix for about a month before he again lost his job.

While he was working as a certified nurse's aide, Catron made about \$9 an hour and worked about forty hours a week. He paid \$75 a week toward his restitution obligation until

he stopped working. Catron stopped paying restitution soon after he stopped working. He offered to pay \$10 a week or “whatever [he] could,” but his probation officer told him that “that wasn’t even making an attempt.” Tr. at 15. On January 19, 2010, the State filed a petition to revoke probation, alleging that a balance of \$128,410.36 remained on the restitution order.

A probation revocation hearing was held on July 21, 2010. Catron testified that he has a high school diploma, served in the Air Force for several years, and then was employed with the postal service until he began serving his sentence in this case. Catron was last employed in March 2009. A psychologist has diagnosed him with depression, panic disorder, and agoraphobia. His treatment for these conditions includes medication and therapy. In addition, he has three degenerative discs in his back and has COPD.¹ For these conditions, he takes medication and does physical therapy at home. Catron has to use an inhaler if he does “anything physical.” *Id.* at 7. He applied for disability benefits in May 2009. His initial application was denied because his conditions were not found to be “severe enough,” but he was awaiting a hearing on an appeal of that decision at the time of the probation revocation hearing. *Id.* at 18.

Catron testified that he received financial assistance from several sources, including the township trustee, food stamps, churches, and United Way. His father also loaned him some money to pay for rent and utilities. Toward the beginning of 2008, he received about

¹ COPD stands for chronic obstructive pulmonary disease, which is “a progressive disease that makes it hard to breathe.” *What is COPD?*, http://www.nhlbi.nih.gov/health/dci/Diseases/Copd/Copd_WhatIs.html (last visited Jan. 25, 2011). “Most people who have COPD have both emphysema and chronic obstructive bronchitis.” *Id.*

\$9000 from a retirement account that he had while he was employed with the postal service. He testified that he used about \$200 of that money to buy his son a car, paid about \$1200 toward past due utility bills, and used an unspecified amount to repay the money that his father had loaned him for rent and utilities. At the time, Catron was about to have his electricity turned off. Other than the retirement account that was cashed out, Catron does not have any investments, bank accounts, or assets of significant value.

The trial court found that Catron had not shown that his conditions were sufficiently severe to make him unable to work and also that he had not used any portion of the money from his retirement account to pay restitution. Therefore, the trial court revoked Catron's probation and sentenced him to a year in the Department of Correction.

Discussion and Decision

Catron argues that there was insufficient evidence to support the revocation of his probation.

The decision to revoke probation is within the sole discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion. On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses. If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation.

Woods v. State, 892 N.E.2d 637, 639-40 (Ind. 2008) (citations omitted).

The State must prove the violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(e). "Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly,

knowingly, or intentionally fails to pay.” Ind. Code § 35-38-2-3(f). Our supreme court recently clarified that the State “has the burden to prove (a) that a probationer violated a term of probation and (b) that, if the term involved a payment requirement, the failure to pay was reckless, knowing, or intentional.” *Runyon v. State*, 2010 WL 4977997 at *3 (Ind. Dec. 8, 2010). If the State meets this burden, the defendant has the burden “to show facts related to an inability to pay indicating sufficient bona fide efforts to pay so as to persuade the trial court that further imprisonment should not be ordered.” *Id.*

Catron admitted that he stopped paying restitution; therefore, he bore the burden of showing that he was unable to pay despite making bona fide efforts to do so. *See id.* (holding that State sustained its burden of proof when defendant admitted that he violated probation by not paying child support; defendant therefore bore the burden to prove inability to pay). Catron testified that he suffers from depression, panic disorder, agoraphobia, degenerative discs in his back, and COPD. However, he did not testify in detail as to the severity of these conditions, how they affect his ability to work, and to what extent his conditions have been alleviated by medication and therapy. The only medical evidence that he submitted in support of his testimony was two pages from a psychiatric assessment, which dated back over a year before the hearing and mostly repeated information that Catron himself had reported. Catron acknowledged that his application for disability benefits had been denied at least initially because his conditions were not “severe enough.” Tr. at 18. Catron’s evidence concerning his medical condition was somewhat vague, and the trial court was not required to credit it. Given that the trial court was within its discretion in determining that Catron had

not shown that he was unable to work, his probation officer's refusal to accept his offer to pay a minimal amount toward the restitution order is of little significance. In addition, Catron admitted that he had received approximately \$9000 from a retirement account. He was unable to completely account for how he spent that money, and it is clear that he spent at least a portion of that money on unnecessary purchases, such as a car for his son. Therefore, we conclude that the trial court did not abuse its discretion by determining that Catron had not met his burden of proof and revoking his probation.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.