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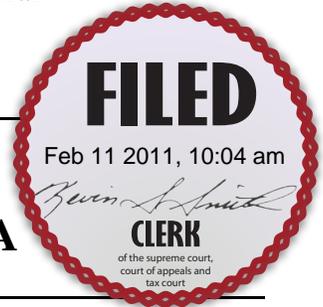
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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID ALAN DAVIS, SR., )

Appellant-Defendant, )

vs. )

No. 48A02-1005-CR-648

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-0802-FC-37

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**February 11, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

David Alan Davis, Sr. appeals his termination from the Madison County Drug Court Program (“Drug Court”). He raises the following issue for our review: whether he was denied the right to due process when his participation in Drug Court was terminated without first affording him notice of a hearing and the right to present evidence and cross-examine witnesses at that hearing.

We reverse and remand with instructions.

### **FACTS AND PROCEDURAL HISTORY**

On February 8, 2008, Davis was charged with fraud on a financial institution as a Class C felony, check deception as a Class A misdemeanor, criminal trespass as a Class A misdemeanor, and four counts of identity deception, each as a Class D felony. On June 9, 2008, Davis pleaded guilty to all of the charges in exchange for the matter being sent to Drug Court. If Davis successfully completed Drug Court, his pending charges would be dismissed. On March 17, 2010, the trial court held a Drug Court hearing, and without notice and without any witnesses being sworn, Davis was terminated from Drug Court. He was referred back to the sentencing court and ordered to serve eleven years executed. Davis now appeals.

### **DISCUSSION AND DECISION**

Davis argues, and the State concedes, that in light of this court’s decision in *Gosha v. State*, 931 N.E.2d 432 (Ind. Ct. App. 2010), we should remand this case for a new hearing that affords Davis the proper due process requirements. In *Gosha*, which presents a nearly identical factual situation, the defendant was terminated from Drug Court without written notice of the allegations or hearing and without an opportunity to

present evidence or to confront and cross-examine witnesses. *Id.* at 435. On appeal, this court held that a defendant in a Drug Court Program shall be afforded the same due process rights as a defendant in a probation revocation proceeding. *Id.* at 434. Because the defendant was not afforded such due process rights, we remanded the case for a new hearing with written notice of the claimed violations, disclosure of the evidence against the defendant, an opportunity to be heard and to present evidence, and the right to confront and cross-examine witnesses. *Id.* at 435.

In the present case, Davis was terminated from Drug Court without being afforded his due process rights. The record lacks any indication that he received any written notice of the alleged violation or the evidence against him or that Davis had an opportunity to confront and cross-examine the witnesses against him. Further, there is also no evidence that Davis waived his due process rights when he agreed to participate in Drug Court. We therefore agree with Davis and the State that Davis was denied his right to due process. We remand to the Drug Court with instructions to conduct an evidentiary hearing in line with the requirements set out in *Gosha*.

Reversed and remanded with instructions.

CRONE, J., and BRADFORD, J., concur.