

Kenneth Bradley appeals the revocation of his probation and the execution of the remainder of his suspended sentence. He presents the following restated issue for review: Did the trial court err in determining that Bradley had violated a condition of his probation?

We affirm.

In August 2003, Bradley pleaded guilty to class B felony dealing in cocaine. The trial court sentenced Bradley according to the plea agreement to fifteen years in prison, with five of those years suspended to probation. In 2009, the State filed a petition to revoke Bradley's probation, alleging that he had failed a urine screen and committed domestic battery. He admitted the violations in October 2009 and was ordered to execute one year of his previously-suspended sentence. He was released from prison on or about February 24, 2010.

Upon his release, Bradley went to the probation department and informed someone (not his probation officer) that he did not believe he had to report to probation anymore. Within days, Bradley was arrested on outstanding charges out of another county. Bradley did not report his arrest to the probation department or otherwise report to probation after his initial, brief contact in February 2010.

On June 9, 2010, the State filed the instant (second) petition to revoke Bradley's probation. The State alleged that he had failed to maintain contact with the probation department. At the hearing on September 2, 2010, Bradley did not dispute the allegation that he had not maintained contact with the probation department. Rather, he argued that he was unable to maintain contact because he was confined in another county on other charges. At the conclusion of the revocation hearing, the court made the following statement:

Release date should have been on or about February 22nd, 2010. He was

charged in connection with a Circuit Court case on March the 1st, 2010 so it would appear that he had at least a week to report and apparently he did report at that point in time but has not reported since then. I'm going to find that the defendant has violated the terms of his probation, going to order...the balance of the previously suspended sentence of four years imposed....

Transcript at 12.

Bradley appeals the court's finding of a violation. He initially directs us to the trial court's written order, which incorrectly indicates that he "enter[ed] a plea of True to the allegations contained in the Petition to Revoke". *Appendix* at 11. Further, Bradley argues that he was denied due process because the court did not provide a statement in the record as to the evidence relied upon and the reasons for revoking probation.

Probation is a matter of grace and is a conditional liberty that is a favor, not a right. *See Kincaid v. State*, 736 N.E.2d 1257 (Ind. Ct. App. 2000). The trial court determines the conditions of probation and may revoke probation if the probationer violates a condition of probation. *Id.* A trial court's order regarding revocation of probation is reviewed for an abuse of discretion. *Johnson v. State*, 692 N.E.2d 485 (Ind. Ct. App. 1998). We neither reweigh the evidence nor judge the credibility of witnesses, and we look only to the evidence most favorable to the State. *Id.* Further, the due process requirements of a probation revocation proceeding are well-established:

Probation revocation implicates a defendant's liberty interest, which entitles him to some procedural due process. Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding.

The minimum requirements of due process include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-

examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation.

Terrell v. State, 886 N.E.2d 98, 100-01 (Ind. Ct. App. 2008) (quoting *Cox v. State*, 850 N.E.2d 488 (Ind. Ct. App. 2006)) (internal citations omitted), *trans. denied*.

Although the written order in this case appears incorrect, as acknowledged by the State, the trial court's statement at the conclusion of the hearing reveals the court's true rationale for revoking probation. Therefore, we will look to that statement. *Cf. Hoepfner v. State*, 918 N.E.2d 695, 699 n.4 (Ind. Ct. App. 2009) (“[w]hen oral and written sentencing statements conflict, we should examine them together to discern the intent of the sentencing court”).

As set forth above, due process requires a written statement by the court regarding the evidence relied upon and the reasons for revoking probation. *Terrell v. State*, 886 N.E.2d 98. This procedural requirement is aimed at promoting accurate fact finding and ensuring the accurate review of revocation decisions. *See Hubbard v. State*, 683 N.E.2d 618 (Ind. Ct. App. 1997). “We have held that placing the transcript of the evidentiary hearing in the record, although not the preferred way of fulfilling the writing requirement, is sufficient if it contains a clear statement of the trial court's reasons for revoking probation.” *Id.* at 621.

In the instant case, the trial court's rationale for revoking Bradley's probation is clear from the record. Bradley made only one brief visit to the probation department after being released from prison and then did not report again. To be sure, Bradley admitted these facts at the hearing but argued, in apparent mitigation, that he was unable to report because he was

arrested on charges out of another county.¹ The record undoubtedly supports the trial court's finding of a probation violation, and we find no infringement of Bradley's due process rights. Finally, we note that although the sanction imposed by the trial court might appear harsh under the circumstances, Bradley has not directly attacked the sanction as an abuse of discretion.²

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.

¹ Bradley did not explain why he could not have notified the probation department of his subsequent arrest and incarceration.

² There are two determinations made by the trial court in a probation revocation proceeding: 1) whether the probationer in fact violated his probation and 2) if so, what if any sanction to impose. *See* Ind. Code Ann. § 35-38-2-3 (West, Westlaw through 2010 2nd Regular Sess.).