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**IN THE
COURT OF APPEALS OF INDIANA**

DAVY LEE PHIPPS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 48A02-1008-CR-970

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David W. Hopper, Judge
Cause No. 48E01-0701-FD-17

May 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Davy Lee Phipps appeals the revocation of his probation.

We affirm.

ISSUE

Whether the evidence was sufficient to support the revocation of Phipps' probation.

FACTS

On January 30, 2008, Phipps pleaded guilty under Cause Number 48E01-07-1-FD-17 to one count of possession of marijuana, a class A misdemeanor. The trial court sentenced Phipps to a suspended sentence of one year; ordered that the sentence be served consecutive to the sentence imposed under Cause Number 48E01-0610-FD-405; and placed Phipps on formal probation. The terms of Phipps' probation required, inter alia, that he obtain his general education degree ("GED"), "with verification of attendance submitted monthly to the Probation Department"; and "not consume alcohol or illicit drugs of any type" (App. 38).

On October 1, 2008, the State filed a notice of probation violation, alleging that Phipps had failed to obtain his GED; maintain or verify employment; and comply with the recommended substance-abuse program. Following a hearing on January 21, 2009, the trial court found that Phipps had violated the terms of his probation but imposed no sanctions.

The State filed a second notice of probation violation on March 24, 2010. The State alleged that Phipps had violated his probation by failing to 1) obtain his GED and 2) abstain from the use of drugs. Specifically, the State alleged that on or about March 10, 2010, Phipps tested positive for benzodiazepines and opiates.

The trial court held a probation revocation hearing on August 16, 2010. During the hearing, the trial court admitted the results of Phipps' positive drug screen into evidence without objection. Phipps' probation officer testified that Phipps had tested positive for drugs and had failed to obtain his GED. His probation officer further testified that Phipps had not provided a prescription for the benzodiazepines or opiates.

Phipps admitted that he had used the drugs for which he tested positive but testified that the drugs had been prescribed to him. Phipps, however, did not submit any prescription from a medical provider to support his testimony. Phipps also admitted that he had not obtained his GED, explaining that an injury prevented him from taking classes.

Finding that Phipps had violated his probation as alleged by the State, the trial court imposed the previously suspended twelve-month sentence and ordered that it be served on in-home detention.

DECISION

Phipps asserts that insufficient evidence exists to support the trial court's finding of a probation violation. He argues that the State "failed to prove that the urine screen resulted in a positive test for any medications that were not prescribed medications for

[an] existing medical condition” and that the “medical condition resulted in an inability for him to complete his GED requirements” (Phipps’ Br. at 6).

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) (internal citations omitted). “A trial court may revoke a person’s probation upon evidence of the violation of any single term of probation.” *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001).

The evidence shows that the trial court placed Phipps on probation, with the conditions that he obtain his GED and refrain from the use of illicit drugs. The evidence further shows that Phipps failed to obtain his GED and that he tested positive for controlled substances, including benzodiazepines¹ and opiates,² on March 10, 2010.

Here, the evidence is sufficient to support the revocation of Phipps’ probation. Phipps’ argument to the contrary is merely an invitation to reweigh the evidence and judge the credibility of the witnesses, which we will not do. Accordingly, we find that the trial court acted within its discretion when it revoked Phipps’ probation.

Affirmed.

RILEY, J., and BARNES, J., concur.

¹ Benzodiazepines are schedule IV controlled substances. Ind. Code § 35-48-2-10.

² Opiates are schedule II controlled substances. I.C. § 35-48-2-6.