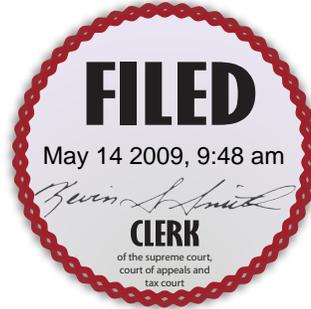


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DONTAE L. DAVIS, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-0810-CR-924

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia Gifford, Judge  
Cause No. 49G04-0602-FC-29863

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**May 14, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Dontae Davis appeals the revocation of his probation. Davis raises one issue, which we revise and restate as whether the trial court properly determined that his decision to proceed without counsel at his revocation of probation hearing was voluntary, knowing, and intelligent. We affirm.

The relevant facts follow. On February 21, 2006, the State charged Davis with forgery as a class C felony and attempted theft as a class D felony. On June 23, 2006, Davis pled guilty to forgery as a class C felony. The trial court sentenced Davis to 730 days with 714 days suspended. On June 4, 2007, the probation department filed a notice of probation violation, which was amended on September 24, 2007, and December 21, 2007. The probation department filed a subsequent notice of probation violation on May 1, 2008, which was amended on June 16, 2008.

At the hearing, the following exchange occurred:

THE COURT: You have the right to have this matter resolved by admission. If you choose to admit that you have again violated your probation I will simply revoke it and send you directly to the Department of Correction. You can also deny the allegation in which case I will appoint Vernon Lorenz to represent you. This matter will be set for hearing October 22 at 1:30 P.M. You will remain in the Marion County Jail through October 22<sup>nd</sup> but when you come back you would have the benefit of an attorney representing you who might be able to make an argument on your behalf that would avoid sending you to prison for 714 days. My question for you this afternoon is whether you think you would benefit from talking to a lawyer before any decision is made on these allegations?

[Davis]: Could I speak first, sir?

THE COURT: Mr. Davis, you need to understand that if you say anything that deals with the facts of this case you potentially will be admitting that you are in violation of probation.

[Davis]: All right. What I was gonna say is that the case that I had in G20 was –

THE COURT: Okay. Mr. Davis, before you say anything further –

[Davis]: Okay. Well yes, sir, I do want an attorney.

THE COURT: A denial will be entered for Mr. Davis. This matter is set October 22<sup>nd</sup> at 1:30 P.M. He is remanded to the custody of the sheriff pending further proceedings.

[Davis]: Well can I still – I had a case in G20 where a detective had contacted me and told me he had a case on me which was the reason why I was violated on probation and he –

THE COURT: Mr. Davis –

[Davis]: Yeah –

THE COURT: – I'm trying to explain that if you want to discuss the facts of this case this prosecutor is going to recommend that I find you in violation and send you to prison for 714 days.

[Davis]: Okay.

THE COURT: You've indicated you want an attorney and I've appointed an attorney to represent you. If you want to proceed without counsel and risk going to prison for 714 days, tell me whatever it is you want to get off your chest. Otherwise, I've given you a hearing October 22<sup>nd</sup> which is the closest date that I have for probation violations and you'll have to wait to talk to your lawyer.

[Davis]: So other than that I can speak for myself now?

THE COURT: If you want to speak for yourself right now but you'll be proceeding without counsel and you're running the risk of going to prison for 714 days.

[Davis]: Yes, sir, I would like to do that.

Transcript at 22-24. Davis then proceeded to explain that he did not report to his probation officer. Davis also testified as follows:

The only reason why I didn't return to probation my probation officer had told me on my last hearing was like that the detective had also contacted him and he was like basically if you don't do what he is asking you to do you lookin [sic] at like 109 years and the detective ask me to turn myself in.

Id. at 24-25. The trial court held Davis's statements indicated that Davis was involved in criminal activity and failed to report to his probation officer, which constituted violations of Davis's probation. The trial court revoked Davis's probation and sentenced Davis to 545 days in the Department of Correction.

The sole issue is whether the trial court properly determined that Davis's decision to proceed without counsel at his revocation of probation hearing was voluntary, knowing, and intelligent. Davis argues that no effort was made to determine Davis's competency to represent himself or to establish a voluntary, knowing, and intelligent waiver of his right to counsel. A defendant is entitled to certain due process protections prior to the revocation of his probation. Bumbalough v. State, 873 N.E.2d 1099, 1101 (Ind. Ct. App. 2007). These protections include written notice of the claimed violation, disclosure of the evidence against him and the opportunity to be heard and present evidence, the right to confront and cross-examine witnesses and a neutral and detached hearing body. Id. at 1102. Additionally, the defendant is entitled to representation by counsel. Id. (citing Ind. Code § 35-38-2-3(e)).

The law is well settled that whenever a defendant proceeds without the benefit of counsel, the record must reflect that the right to counsel was voluntarily, knowingly, and intelligently waived. Id. Specifically, the trial court must determine the defendant's competency to represent himself and establish a record of the waiver. Id. The record must show that the defendant was made aware of the "nature, extent and importance" of the right to counsel and the necessary consequences of waiving such a right. Id. (quoting Bell v. State, 695 N.E.2d 997, 999 (Ind. Ct. App. 1998)). "There are no magic words a judge must utter to ensure a defendant adequately appreciates the nature of the situation. Rather, determining if a defendant's waiver was knowing and intelligent depends on the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused." Eaton v. State, 894 N.E.2d 213, 218 (Ind. Ct. App. 2008) (citations and quotation marks omitted), trans. denied. We review de novo a trial court's finding that a defendant waived his right to counsel. Cooper v. State, 900 N.E.2d 64, 67 (Ind. Ct. App. 2009).

Here, the trial court warned Davis emphatically and consistently that, in proceeding without counsel, Davis risked being sent back to prison. Davis responded by saying "All right," and "Okay," to the trial court's warnings. Transcript at 22-23. The trial court further noted the benefit of having an attorney "who might be able to make an argument on your behalf that would avoid sending you to prison for 714 days." Id. at 22. Based upon the record, trial court clearly explained the nature, extent, and importance of the right to counsel as well as the necessary consequences of waiving this right. Davis

responded that he understood the trial court's warnings. Thus, there is a record of his competency and waiver of the right to counsel. See Greer v. State, 690 N.E.2d 1214, 1217 (Ind. Ct. App. 1998) ("This record, which also indicates that Greer understood the trial judge's advisements, establishes Greer's knowing, intelligent, and voluntary waiver of counsel."), trans. denied. We therefore conclude that Davis's waiver was voluntary, knowing, and intelligent. See Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003) (holding that the trial court's inquiry and the defendant's responses were adequate to establish that defendant exercised his right to represent himself pro se knowingly, willingly, and voluntarily).

For the foregoing reasons, we affirm the revocation of Davis's probation.

Affirmed.

CRONE, J. and BRADFORD, J. concur