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ATTORNEY FOR APPELLANT:

ELIZABETH A. GABIG
Marion County Public Defender Agency
Appellate Division
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES A. MARTIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0811-CR-1022
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 4
The Honorable Patricia J. Gifford, Judge
The Honorable Steven J. Rubick, Magistrate
Cause No. 49G04-0603-PC-42395

June 3, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James Martin (Martin), appeals the trial court's revocation of his placement with community corrections.

We affirm.

ISSUE

Martin presents a single issue for our review, which we restate as: Whether the trial court deprived him of due process by allowing him to proceed *pro se* during the second of two hearings on an alleged violation of community corrections rules.

FACTS AND PROCEDURAL HISTORY

On September 26, 2006, Martin pled guilty to corrupt business influence, a Class C felony, Ind. Code § 35-45-6-2, and admitted to being an habitual offender, Ind. Code § 35-50-2-8. On October 6, 2006, the trial court imposed a sentence of two years for the Class C felony, enhanced by four years based on Martin's status as an habitual offender, for a total sentence of six years. The trial court ordered the first two years to be served in the Department of Correction (DOC) and the last four years to be served with community corrections.

On August 5, 2008, while serving the community corrections part of his sentence at the Duvall Residential Center in Indianapolis, Martin was placed in a holding cell after allegedly approaching a guard in a threatening manner. Community corrections staff reported that Martin urinated and defecated on the floor of the holding cell and smeared the feces "all over the holding cell," apparently to make a "statement." (Appellant's App. p.

106). Martin was arrested and charged with disorderly conduct. The next day, August 6, 2008, community corrections filed a Notice of Violation of Community Corrections Rules based on the incident. On August 11, 2008, the trial court held an initial hearing on the notice of violation and appointed an attorney to represent Martin in the violation proceeding.

On August 27, 2008, the trial court held a violation hearing. At the beginning of the hearing, Martin's attorney informed the trial court that Martin wished to continue the hearing until after he had his "day in court" on the disorderly conduct charge. (Transcript p. 7). The trial court said that it would hear testimony from the witnesses who had appeared and then take the matter under advisement. Several employees of the residential center testified about the events of August 5, and Martin's attorney cross-examined most of them. Because Martin's trial on the disorderly conduct charge was set for October 8, the trial court continued the violation proceeding until October 22.

In the interim, on September 2, 2008, Martin filed a Motion to Proceed as Pro-Se, Waiving Counsel. In his motion, Martin claimed that his attorney was "ineffective" for failing to call Martin to testify on his own behalf and for denying him "an opportunity to cross-examine witnesses with questions he had prepared." (Appellant's App. pp. 141-42). Martin asked the trial court to "allow him to represent himself in this matter, a constitutional right afforded to defendant." (Appellant's App. p. 143). The chronological case summary includes the following entry for October 2, 2008: "DEFT SENDS WRITTEN STATEMENT STATING HE WISHES TO PROCEED PRO-SE COURT GRANTS PERMISSION, DEFENDANT IS NOW PRO-SE." (Appellant's App. p. 58).

On October 22, 2008, the trial court resumed the violation hearing. Martin appeared without an attorney and informed the trial court that he had been found guilty of the disorderly conduct charge. The trial court immediately asked the parties for "[a]rguments as to disposition[.]" (Tr. p. 38). The trial court found revocation of Martin's placement with community corrections to be appropriate in light of "his conduct at the facility and his new conviction[.]" (Tr. p. 41). The court ordered Martin to serve four years in the Department of Correction, with credit for the time served with community corrections.

Martin now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Martin argues that the trial court should have determined whether his waiver of counsel was knowing, voluntary, and intelligent before allowing him to proceed *pro se* at the second hearing. The Due Process Clause of the Fourteenth Amendment to the United States Constitution imposes procedural and substantive limits on the revocation of a defendant's placement in a community corrections program. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh'g denied*. Whether a party was denied due process is a question of law that we review *de novo*. *Miller v. Ind. Dep't of Workforce Dev.*, 878 N.E.2d 346, 351 (Ind. Ct. App. 2007); *see also U.S. v. Neal*, 512 F.3d 427, 434 (7th Cir. 2008).

We addressed an argument very similar to Martin's in *Fields v. State*, 676 N.E.2d 27 (Ind. Ct. App. 1997), *trans. denied*. In *Fields*, the defendant committed crimes while on probation for earlier crimes. The State filed new criminal charges and a petition to revoke the defendant's probation. The defendant was found guilty of the new crimes after a trial at

which he was represented by counsel. Thereafter, the trial court held a consolidated sentencing and probation revocation hearing. The defendant appeared without counsel. The trial court revoked the defendant's probation and imposed sentence.

On appeal, the defendant argued that he was denied a fair probation revocation hearing because, in part, the trial court had failed to ascertain whether his decision to proceed without counsel was voluntary. In rejecting the defendant's argument, we noted that "[t]he only time Fields was not represented by counsel was during the actual revocation of his probation." *Id*. at 31. During the preceding trial, the defendant had been represented by counsel and had the opportunity to present evidence and witnesses and to confront and cross-examine the witnesses against him. *Id*. More importantly, "the trial court had the authority to revoke Fields' probation as soon as he was convicted of additional crimes." *Id*. (citing *Gleason v. State*, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994)). As such, the defendant was not denied due process simply because he was not represented by counsel during the final hearing revoking his probation. *Id*.

The same things can be said here. The only time Martin was not represented by counsel was during the second hearing, when the trial court actually revoked his community corrections placement. During the first hearing, Martin was represented by counsel and had the opportunity to present evidence and witnesses and to confront and cross-examine the

witnesses against him.[1] He had the same opportunity at his trial on the disorderly conduct charge, but he was nonetheless found guilty. As we said in *Fields*, as soon as Martin was convicted of this additional crime, the trial court had the authority to revoke his community corrections placement. We therefore affirm the trial court's decision to revoke that placement and to order Martin to serve the remainder of his sentence with the DOC.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not deprive Martin of due process by allowing him to proceed *pro se* at the second hearing.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.

[1] As mentioned above, Martin alleged in his Motion to Proceed Pro-Se, Waiving Counsel that counsel had been ineffective for failing to call Martin as a witness and to allow Martin to cross-examine the State's witnesses with questions he had prepared. However, Martin makes no argument on appeal as to the alleged ineffectiveness of his attorney at the first hearing.