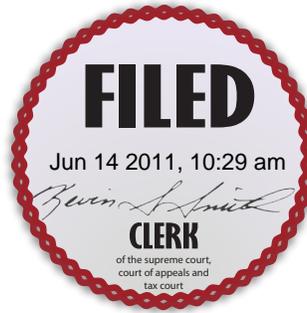


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES D. DOUGLAS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 73A01-1010-CR-586

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0912-FD-151

June 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In December 2009, James D. Douglas was convicted of invasion of privacy and sentenced to three years, with roughly one half to be served in prison and the other half to be suspended. He was placed on probation and was ordered to report in daily and to notify his probation officer of any address changes. He reported daily until he got evicted. At that point, he did not notify his probation officer of an address change or even let her know his whereabouts.

The State filed a petition to revoke Douglas's probation. The trial court determined that he had failed to report as required and sent him back to prison to serve one year of his remaining sentence. He now appeals, claiming that the trial court erred in admitting certain hearsay testimony; that the evidence is insufficient to support a finding that he violated his probation; and that the trial court erred in revoking his probation and sending him back to prison for one year. Finding no error, we affirm.

Facts and Procedural History

Douglas was convicted of class D felony invasion of privacy in July 2009. On August 14, 2009, his ex-wife Brandi Becker obtained a two-year protective order prohibiting him from having contact with her and with their daughter E.D. On December 1, 2009, Brandi reported to police that Douglas had been sending her and E.D. letters from prison.

On December 3, 2009, the State charged Douglas with two counts of class D felony invasion of privacy, and he subsequently pled guilty to one count. On May 13, 2010, the trial court sentenced him to three years, with 566 days executed and the balance suspended.

He was placed on probation for eighteen months. The conditions of his probation included notification of any change in address and the completion of sixty days of daily reporting. He resided at a Greenfield homeless shelter called Hope House and reported in as required for the first fifty days. On July 9, 2010, he was evicted from Hope House for allegedly making sexual advances toward other residents. He did not report a new address to his probation officer and ceased to report daily as required.

On July 12, 2010, the State filed a petition to revoke Douglas's probation, alleging that his whereabouts were unknown, that he failed to complete daily reporting, and that he failed to notify the probation department of a new address. On July 16, 2010, Douglas left a voicemail for the probation department indicating that he was in the hospital seeking mental health treatment. He was arrested at Community North Hospital on July 17, 2010. After a September 28, 2010 probation revocation hearing, the trial found him to be in violation of the following conditions of his probation: daily reporting and notification of address change. On October 19, 2010, the trial court revoked his probation and ordered him to serve one year of his previously suspended sentence. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

I. Admission of Hearsay Testimony

Douglas first contends that the trial court erred in admitting certain hearsay testimony at his probation revocation hearing. We review a trial court's decision to admit evidence in a probation revocation proceeding for an abuse of discretion. *Figures v. State*, 920 N.E.2d

267, 271 (Ind. Ct. App. 2010). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* The Rules of Evidence do not apply in probation revocation proceedings. Ind. Evidence Rule 101(c)(2). As such, the general rule against hearsay is inapplicable. *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999). Nonetheless, the probationer is afforded the right to confront and cross-examine witnesses during probation revocation proceedings,¹ albeit subject to a more narrow right under more flexible procedures. *Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007). As such, “the general rule is that hearsay evidence may be admitted without violating a probationer’s right to confrontation if the trial court finds the hearsay is substantially trustworthy.” *Figures*, 920 N.E.2d at 271 (citation and internal quotation marks omitted). The substantial trustworthiness test requires that the trial court evaluate the reliability of the hearsay evidence. *Reyes*, 868 N.E.2d at 442.

Douglas argues that certain testimony given by probation officer Brooke Lawson was not substantially trustworthy. Officer Lawson testified regarding a notification she received in her official capacity as Douglas’s probation officer. She stated under oath that Community Corrections Case Manager Margaret Scott had notified her about Douglas’s eviction from Hope House and his subsequent failure to report as required. She also testified that it was common practice for her to work with Scott and share caseloads and information. Tr. at 8. We have previously upheld a trial court’s decision to admit a law enforcement officer’s testimony concerning notifications from fellow law enforcement personnel. *See, e.g.,*

¹ Ind. Code § 35-38-2-3.

Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009) (holding that community corrections officer's testimony regarding fellow officers' report of discovering firearm at probationer's residence did not lack indicia of reliability where officers knew each other and had history of working together). Scott and Officer Lawson had a history of working together and shared information that was integral to the interrelationship between their respective law enforcement agencies. Moreover, Douglas's own testimony confirmed the reliability of the information contained in the hearsay testimony: that he had been evicted from Hope House and had not reported in as required. Tr. at 23-25. Finally, to the extent Douglas bases his assertion of error on the trial court's failure to make an explicit finding of trustworthiness, we note that while the trial court ideally should make such an explicit finding, it is not required to do so. *Reyes*, 868 N.E.2d at 442. Thus, we find no abuse of discretion in the trial court's decision to admit Officer Lawson's testimony.

II. Sufficient Evidence of Violation

Douglas next asserts that the evidence is insufficient to support a finding that he violated his probation. When reviewing a sufficiency challenge in the context of a probation violation, we neither reweigh evidence nor judge witness credibility. *Figures*, 920 N.E.2d at 272. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Because probation revocation proceedings are civil in nature, the State must prove a violation by a preponderance of the evidence. *Id.* If substantial evidence of probative value supports the trial court's determination that a violation has occurred, we will affirm. *Id.*

Indiana Code Section 35-38-2-3(a)(1) states that “[t]he court may revoke a person’s probation if ... the person has violated a condition of probation during the probationary period ... and ... the petition to revoke probation is filed during the probationary period[.]” Here, the evidence most favorable to the judgment shows that Douglas failed to complete the last ten days of his daily reporting requirement and that he failed to report address changes. At his revocation hearing, he testified that after he was evicted from Hope House, he lived at an apartment on West South Street in Greenfield and that he did not report the change because he lacked the funds to do so. Tr. at 24. He stated that from there, he went to Community North Hospital for mental health treatment. When asked why he did not report daily to his probation officer, he alternated between two explanations: a lack of money to make phone calls and a misunderstanding about how often and to whom he was required to report. Whatever the reason, he admitted that he failed to report daily and that he failed to report his address changes. He merely asks us to reweigh evidence, which we may not do. Thus, we find sufficient evidence to support the trial court’s finding that he violated his probation.

III. Probation Revocation

Finally, Douglas challenges the trial court’s decision to revoke his probation and execute one year of his remaining term. Probation is not a right; it is a favor, a matter of grace and conditional liberty. *Cooper v. State*, 917 N.E.2d 667, 671 (Ind. 2009). “The trial court determines the conditions of probation and may revoke probation if those conditions are violated.” *Id.* A decision to revoke probation lies within the trial court’s sound

discretion, and we review it for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

Once the trial court has determined that a person has violated the terms of his probation, the court may impose one or more of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g).

Here, the trial court chose to execute part of Douglas's suspended sentence. The trial court initially sentenced Douglas to three years, with 566 days executed and the balance suspended, with eighteen months' probation. Douglas contends that the trial court abused its discretion in ordering him to serve one year in prison. In support, he cites his completion of a substantial portion of his daily reporting requirement (fifty out of sixty days) and the relatively short period that his whereabouts were unknown (one week).

Partial compliance notwithstanding, the record indicates the following: Douglas has been on probation three or four times before; he suffers from mental illness and is medication-dependent; it is questionable whether he takes his medication regularly or correctly when he is out on his own; he needs accountability in the form of daily reporting and has not been successful in that regard; and for these reasons, his probation officer recommended that he be remanded to the Department of Correction ("DOC"). Moreover, at

the final disposition hearing, the trial court expressed frustration and exasperation in its attempt to reach a resolution that addresses Douglas's mental illness and specifically his need for "a significant element of ... structure." Tr. at 36. The court concluded,

I don't have very many alternatives at this point. I don't think that probation works for you. Uh, and one of the reasons why I don't think it works is the mental health element and I realize that what I'm about to do is not the disposition that I would like but I don't have many alternatives.

Id. at 36-37. In sum, we agree with the trial court's assessment and conclude that it acted within its discretion in remanding Douglas to the DOC to serve one year of his previously suspended sentence. Accordingly, we affirm.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.