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IN THE
COURT OF APPEALS OF INDIANA

DONALD TYRONE SHELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0810-CR-951
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-9807-CF-163

June 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Donald Tyrone Shell ("Shell") appeals the revocation of his probation and raises the following issue for our review: whether the State presented sufficient evidence to revoke Shell's probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

In January 1999, Shell pleaded guilty to dealing in cocaine as a Class B felony.[1] Shell was sentenced pursuant to the plea agreement to twenty years, with twelve years executed in the Indiana Department of Correction, and eight years suspended to probation. Shell completed the executed portion of his sentence and began his probation in August 2007.

In September 2008, the trial court held an evidentiary hearing after the State filed a Second Notice of Violation of Probation against Shell. The second notice alleged that Shell violated the conditions of his probation for the following reasons: (1) twice violating Indiana and U.S. laws; (2) failure to obtain a GED; (3) failure to maintain employment; (4) curfew violation; and (5) possession of a firearm. *Appellant's App*. at 21-22. The trial court revoked Shell's probation and ordered him to serve the suspended eight-year sentence in the Department of Correction. Shell now appeals.

DISCUSSION AND DECISION

"A trial court's decision to revoke probation is reviewed for an abuse of discretion." *Podlusky v. State*, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005). An abuse of

[1] *See* Ind. Code § 35-48-4-1.

discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (citing *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)). A probation revocation hearing is civil in nature, and the State must prove the alleged violations only by a preponderance of the evidence. *Podlusky*, 839 N.E.2d at 200. We will only consider the evidence most favorable to the judgment and will not reweigh the evidence or judge the credibility of the witnesses. *Id.* We will uphold the probation revocation if there is substantial evidence to support the trial court's finding that the probationer violated any term of the probation. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999).

Indiana Code section 35-38-2-2.3(b) requires that the State provide the probationer with a written copy of the conditions of his probation at the sentencing hearing. Shell contends that the "Conditions of Probation" form introduced by the State at the evidentiary hearing is insufficient to prove that he received a written copy of the conditions of his probation and understood such because he did not sign the form. *Appellant's Br.* at 8. Shell does not point to any provision within Indiana Code section 35-38-2-2.3 or a decision of the Indiana courts mandating such a requirement.

The evidence in the record before us is sufficient for the trial court to infer that Shell was given a copy of the conditions of his probation and that he understood such conditions. The record includes a "Conditions of Probation" form dated on the day of sentencing. The form contains the signature of the probation officer, the signature of the judge, and a statement from the probation officer noting, "[Defendant] unable to sign due

to condition (crying and belligerent)." *Appellant's App*. at 14. The trial court could have reasonably deduced that Shell was made aware of the conditions of his probation.

Even if the State had failed to provide sufficient evidence of notice, the trial court could have revoked Shell's probation for violating Indiana and U.S. laws. The requirement that a probationer not commit an additional crime automatically attaches by operation of law. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995); *Jaynes v. State*, 437 N.E.2d 137, 139 (Ind. Ct. App. 1982). "Although the better practice would be to provide specifically, as a condition of probation, that the probationer should not commit an additional crime, it is not necessary to do so." *Jaynes*, 437 N.E.2d at 139. The State presented evidence that Shell committed additional crimes while on probation, and Shell does not contest those allegations. Therefore, the trial court did not abuse its discretion and the revocation of Shell's probation must be affirmed.

Affirmed.

RILEY, J., and MATHIAS, J., concur.