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# IN THE
# COURT OF APPEALS OF INDIANA

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| JARED HENSON, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 29A02-0811-CR-1047 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-0403-FB-017

**June 23, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Jared Henson challenges the sufficiency of the evidence supporting his probation revocation. We affirm.

On March 21, 2005, Henson pled guilty but mentally ill to aggravated battery and was sentenced to twelve years, with six years suspended and four years of probation. On December 21, 2007, the State filed its first information for violation of probation after Henson admitted to smoking marijuana in violation of Condition 6 of his probation agreement. The first information also alleged probationary violations for failure to pay probation fees and failure to submit to a treatment facility.

On March 3, 2008, the State filed its second information for violation of probation Condition 2[1] alleging that Henson failed to comply with state law by committing two counts of sexual misconduct with a minor and failed to notify the probation department within forty-eight hours of the new charges.

On March 26, 2008, the State filed a third information for violation of probation Condition 2 alleging that Henson failed to comply with state law by committing one count of battery on an officer and two counts of resisting law enforcement and failed to notify the probation department within forty-eight hours of the new charges.

On March 28, 2008, the State filed a fourth information for violation of probation Condition 2 alleging that Henson failed to comply with state law by committing one count of rape, one count of sexual misconduct with a minor, and one count of confinement and failed

[1] Condition 2 states, "You shall comply with all Local, State and Federal laws, and within 48 hours of being arrested or charged for a new criminal offense, you shall contact your Probation Officer with that information." Appellant's App. at 15.

to notify the probation department within forty-eight hours of the new charges.

On November 13, 2008, the trial court held a factfinding hearing on the alleged probation violations. The trial court found that Henson violated Condition 6 of his probation agreement as alleged in the first information by using marijuana and that Henson violated Condition 2 of his probation agreement as alleged in the second, third, and fourth informations by failing to give notice of new charges to the probation department within forty-eight hours.[2]

On appeal, Henson contends that the trial court erred in finding he violated Condition 2 of his probation agreement. The ability to serve a sentence on probation has been described as a "matter of grace" and a "conditional liberty that is a favor, not a right." *Marsh v. State*, 818 N.E.2d 143, 146 (Ind. Ct. App. 2004) (citation and quotation marks omitted). A probationer faced with a petition to revoke his probation is therefore not entitled to the full panoply of rights he enjoyed prior to the conviction. *Id*. at 146-47. The rules of evidence do not apply in a revocation proceeding, and the State's burden of proof is lower, as the State need only prove an alleged violation of probation by a preponderance of the evidence. *Id*. at 147.

We review a trial court's decision to revoke probation using the abuse of discretion standard. *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). "An abuse of

[2] Contrary to the State's suggestion, the trial court did not find probable cause to believe that Henson committed the crimes alleged in the second, third, and fourth informations.

discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court." *Id*. This Court will consider only the evidence most favorable to the judgment and will not reweigh evidence or judge witness credibility. *Podlusky v. State*, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005). If the trial court finds the person violated a single condition of probation, it may order execution of any part of the sentence that was suspended at the time of initial sentencing. *Rosa*, 832 N.E.2d at 1122.

Initially we note that Henson admitted to violating his probation by smoking marijuana. We have held on numerous occasions that the use of illegal drugs is sufficient to support the trial court's revocation of probation. *See, e.g.*, *Cox v. State*, 706 N.E.2d 547, 552 (Ind. 1999) (holding defendant's positive urinalysis test for marijuana use was sufficient to support revocation of defendant's probation). This alone is sufficient to uphold the trial court's decision.

As for the trial court's finding that he violated Condition 2 of his probation, Henson claims that he was unaware of the sexual misconduct charges mentioned in the second information and therefore unable to give notice as a result of his ignorance. However, before Henson allegedly raped his second victim, he made a statement indicating his awareness of the sexual misconduct charges.[3] Henson also would have become aware that he had been charged with sexual misconduct when he was arrested on March 17. We also note that

[3] Before allegedly raping A.C., Henson stated that he "wanted to have memories of her because he knew he was going to prison as a result of [a] criminal case that had been filed against him." State's Ex. 7.

Henson became aware of the battery and resisting law enforcement charges underlying the third information during his initial hearing on March 18. Tr. at 37. Finally, even though Henson was incarcerated, he would have learned that he had been charged with the rape underlying his fourth information at his initial hearing on March 27. Henson's statement, arrest, and presence at the initial hearings are sufficient for the trial court to have found by a preponderance of the evidence that Henson was on notice of the previous charges that should have been divulged to the probation department.

Henson also claims that it was impossible for him to give notice of the charges because he was incarcerated and because the probation department does not accept collect phone calls. We disagree. Henson could have notified the probation department through his attorney, with whom he appeared on multiple occasions. Henson also could have used a proxy, such as his parents, a friend, or any other person who might be willing to accept a collect telephone call. Even if another person was unavailable, Henson could have mailed a letter to the probation department. There is no evidence that Henson made any attempt to notify the probation department, either by telephone or by mail. As such, we find no abuse of discretion in the trial court's revocation of Henson's probation.

Affirmed.

BRADFORD, J., and BROWN, J. concur.