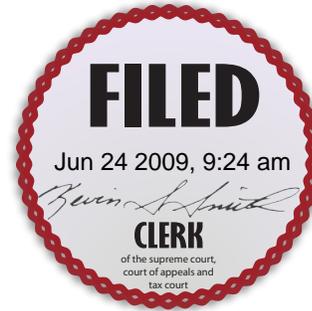


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRIAN BROWNING,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 71A03-0808-CR-422

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John Marnocha, Judge  
Cause No. 71D02-0710-FC-299

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**June 24, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Brian Browning's ("Browning") probation was revoked in the St. Joseph Superior Court and he was ordered to serve the remainder of his previously suspended four-year sentence in the Department of Correction. Browning appeals his probation revocation arguing that it is not supported by sufficient evidence. We affirm.

### **Facts and Procedural History**

Browning pleaded guilty to Class C felony burglary. On February 6, 2008, Browning was sentenced to four years and the entire sentence was suspended to probation. As a condition of his probation, Browning was placed on home detention with East Race Community Corrections ("ERCC") for one year.

On May 13, 2008, the State filed a petition to revoke Browning's probation. The State alleged that Browning 1) was absent from his home without authorization; 2) had unpaid fees; 3) tested positive for marijuana; 4) failed to attend recommended substance abuse treatment; and 5) failed to report for two scheduled appointments with his probation officer. A hearing was held on the State's petition on July 21, 2008.

At the hearing, Browning's probation officer testified that Browning failed to appear for two scheduled probation appointments. Browning's home detention officer testified that Browning left his home without authorization two or three times daily. Tr. p. 30. After he was reminded of the terms of his home detention, Browning continued to leave his home without authorization. Browning also testified and admitted to smoking marijuana. Tr. pp. 63-64. The trial court revoked Browning's probation after concluding that the State proved the alleged probation violations except the failure to pay electronic monitoring fees. The court ordered Browning to serve the remainder of his four-year suspended sentence in the Department of Correction. Browning now appeals.

### **Discussion and Decision**

Browning argues that State presented insufficient evidence to support the revocation of his probation. “The decision to revoke probation is within the sole discretion of the trial court.” Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008). On appeal, we review the court’s decision to revoke probation for an abuse of that discretion. Id. Moreover, it is well settled that

[a] probation revocation proceeding is in the nature of a civil proceeding, and therefore, the alleged violation need be proved only by a preponderance of the evidence. Violation of a single condition of probation is sufficient to revoke probation. As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of the witnesses. We look only to the evidence which supports the judgment and any reasonable inferences flowing therefrom. If there is substantial evidence of probative value to support the trial court’s decision that the probation committed any violation, revocation of probation is appropriate.

Richardson v. State, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008) (quoting T.W. v. State, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007), trans. denied (citations omitted).

Browning claims that he was not required to report to probation on his Class C felony burglary conviction until June 27, 2008, because he was ordered to serve his probationary term consecutive to a prior misdemeanor conviction for which he was already serving probation. Aside from his testimony at the revocation hearing, Browning presented no evidence to support his assertion, and Browning has not included the court’s sentencing order or abstract of judgment in the record on appeal.<sup>1</sup>

Probation Officer Michelle Urbanski testified that Browning’s misdemeanor probation was transferred to her because Browning was ordered to serve his four-year suspended sentence in this case concurrent to his prior misdemeanor sentence. Tr. pp. 47-48. Moreover, at the sentencing hearing on the felony burglary conviction, Browning was told to report to ERCC to begin serving home detention no later than February 25, 2008, and Browning did so.

The State presented sufficient evidence to establish by a preponderance of the evidence that Browning was absent from his home without authorization and failed to report for two

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<sup>1</sup> The trial court took judicial notice of the sentencing order at the revocation hearing. Tr. p. 26.

scheduled appointments with his probation officer. Browning's argument to the contrary is merely a request to reweigh the evidence and the credibility of the witnesses, which our court will not do. Finally, if these proved violations were not enough, Browning admitted that he smoked marijuana while on probation.

For all of these reasons, we conclude that the trial court did not abuse its discretion when it revoked Browning's probation and ordered him to serve the remainder of his previously suspended four-year sentence in the Department of Correction.

Affirmed.

RILEY, J., and KIRSCH, J., concur.