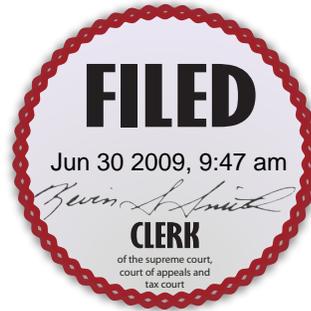


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SETH BECK,)
)
Appellant/Defendant,)
)
vs.) No. 48A02-0812-CR-1081
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman Jr., Judge
Cause No. 48D03-0712-FB-377

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Seth Beck appeals from the revocation of the probation ordered following his guilty pleas to Class C felony Criminal Confinement and Class D felony Theft. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 6, 2008, Beck pled guilty to Class C felony criminal confinement and Class D felony theft. On June 23, 2008, the trial court sentenced Beck to an aggregate sentence of forty-eight months of incarceration, all suspended to probation. Among the terms of Beck's probation were that he participate in the RIGHT program at the Community Justice Center in Anderson.

On August 6, 2008, the State alleged that Beck had violated the terms of his probation by failing to successfully complete the RIGHT program. On September 11, 2008, the State additionally alleged that Beck had violated the terms of his probation by committing Class B felony armed robbery and two counts of Class B felony criminal confinement. On October 13, 2008, the trial court found, following a hearing, that Beck had violated the terms of his probation as alleged, and it ordered that his suspended sentence be executed.

DISCUSSION AND DECISION

Probation is 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) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). We review a trial court's probation revocation for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. If the trial court finds that the person violated a condition of probation, it may order the execution

of any part of the sentence that was suspended at the time of initial sentencing. *Stephens v. State*, 818 N.E.2d 936, 942 (Ind. 2004).

Beck contends the trial court denied him the opportunity to present evidence that would tend to explain or mitigate his violations, as required by our decision in *Parker v. State*, 676 N.E.2d 1083, 1086 n.4 (Ind. Ct. App. 1997). Beck's argument seems to be that *Parker* requires some sort of bifurcated probation revocation hearing, with evidence regarding the question of revocation being presented only following a finding of violation.

As we recognized in *Parker*, a probation revocation is a two-step process that requires not only that the trial court find that a violation of the terms of probation occurred, but also that it determine whether the violation requires revocation. *Id.* Moreover, in making the second determination, the trial court must afford the probationer the opportunity to present evidence tending to explain or mitigate a violation. *Id.* As we have recently held, however, none of this requires anything like an actual bifurcated proceeding. In *Vernon v. State*, 903 N.E.2d 533 (Ind. Ct. App. 2009), *trans. denied*, we concluded that a single evidentiary hearing is sufficient to provide a probationer the opportunity to present mitigating evidence in a case where the underlying question of a violation is also addressed in the same hearing.¹ *Id.* at 537. In short, *Parker* and *Vernon* stand for the proposition that a single hearing is all that is required in this context, even if both steps of a potential probation revocation are at issue. Here, an evidentiary hearing was held, and there is no indication that the trial court

¹ Where the probationer admits all of the alleged probation violations, he must still be given the opportunity to present mitigating evidence at a hearing. *Vernon*, 903 N.E.2d at 537. Such is not the case, here, however, as Beck denied both allegations. (Appellant's App. 4).

prevented Beck from presenting evidence on his behalf. Importantly, the record is devoid of any specific request by Beck to present mitigating evidence prior to the trial court's pronouncement of sentence. As such, we conclude that Beck had the opportunity to present mitigating evidence regarding his probation violations.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.