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IN THE
COURT OF APPEALS OF INDIANA

LONNIE WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0812-CR-1168
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
Cause No. 49G20-0309-FA-147699

July 2, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Lonnie White appeals the trial court's order finding that he had violated at least one condition of probation and revoking the balance of his probation and suspended sentence. White argues that there is insufficient evidence supporting the finding that he violated probation and that the trial court erred by revoking all of the remaining probation. Finding sufficient evidence and no error, we affirm.

FACTS

On December 8, 2003, White pleaded guilty to class B felony dealing in cocaine. The trial court sentenced White to a ten-year executed sentence. White subsequently moved for a modification of the sentence and, at a November 14, 2006, hearing on White's motion, the trial court modified the sentence by suspending 1,600 days and placing White on probation for 730 days.

On November 21, 2008, the State filed a notice of probation violation that contained the following allegations: (1) in mid-October 2008, White had been arrested and charged with prescription offenses and possession of a controlled substance, class D felonies; (2) on September 22, 2008, White tested positive for tetrahydrocannabinol (THC); and (3) White had failed to comply with his financial obligation. The trial court held a probation revocation hearing on December 4, 2008. At the hearing, the State offered into evidence a laboratory report showing that White had tested positive for THC. White did not object to the report. Following the hearing, the trial court found that White had violated at least one of the conditions of his probation, revoked the probation, and ordered the entire 1,600-day backup executed. White now appeals.

DISCUSSION AND DECISION

The decision to revoke probation is within the trial court's sole discretion, and we review its decision for abuse of that discretion. Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008). We will consider only the evidence most favorable to the judgment without reweighing that evidence or assessing witness credibility. Id. If there is substantial evidence of probative value to support the trial court's decision that the defendant has violated any term of probation, we will affirm the decision to revoke probation. Id.

Probation revocation is a two-step process. Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). First, the trial court must make a factual determination that a violation has occurred. Id. If a violation is proved, then the trial court must determine whether the violation warrants revocation of the probation. Id.

White's plea agreement contained the following provision:

> The defendant agrees that if he . . . is placed on probation or parole at any time as a result of the conviction in this case, he . . . shall be available and submit to random urinalysis testing upon demand by and without notice from the probation or parole department and such test shall be paid for by the defendant as a cost and condition of probation or parole. In the event such urinalysis test is positive for an unauthorized controlled substance and the defendant is found to be in violation of probation or parole as a result of such test, the defendant shall receive an additional executed sentence . . . .

Appellant's App. p. 28. White, therefore, was aware of the condition of probation requiring him to submit to random drug screens and also understood that if he tested positive for an unauthorized controlled substance—such as THC—he could receive additional executed time.

At the revocation hearing, the State offered into evidence a laboratory report establishing that White's urine sample had tested positive for THC. White did not object to this report. Instead, White merely noted that his THC level was at a fifty-eight, and with a cutoff of fifty, "I guess I might even argue that there's some room for error in there." Tr. p. 6. He did not elaborate, however, and did not question the accuracy of the report or deny the positive drug screen.

Based on this record, we find substantial evidence of probative value supporting the trial court's conclusion that White violated a condition of probation. White argues that the trial court should not have ordered the remaining suspended sentence of 1,600 days to be executed. We observe, however, that the trial court had afforded White leniency by modifying his original ten-year executed sentence. Rather than taking advantage of this second chance by leading a law-abiding life and re-assimilating into his community in a lawful way, within two years, White tested positive for THC and was arrested for new drug offenses. Under these circumstances, we find that the trial court did not abuse its discretion by revoking the balance of White's probation and ordering it executed.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.