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IN THE
COURT OF APPEALS OF INDIANA

JOSHUA L. STANNARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0904-CR-351
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause Nos. 27D01-0603-FB-45, 27D01-0408-FD-107

August 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Joshua L. Stannard appeals his sentence imposed as a result of his probation revocation. Stannard raises one issue, which we revise and restate as whether the trial court impermissibly relied on ex parte communications when it ordered Stannard to serve his previously suspended sentence at the Indiana Department of Correction. We affirm.

In 2005, Stannard pled guilty to theft as a class D felony under Cause Number 27D01-0408-FD-107 ("Cause No. 107"). Stannard was sentenced to three years, two years of which were suspended to probation. In 2006, while on probation, Stannard pled guilty to burglary as a class C felony and two counts of theft as class D felonies under Cause Number 27D01-0603-FB-45 ("Cause No. 45"). The trial court sentenced Stannard to concurrent terms of eight years for the burglary conviction and three years each for the theft convictions, and the trial court suspended three years to supervised probation. The trial court ordered Stannard to serve his sentence under Cause No. 45 consecutively to his sentence in Cause No. 107. The trial court also stated that Stannard may participate in the work release program subject to the approval of the Grant County Sheriff.

In August 2008, the State filed petitions to revoke Stannard's probation in connection with both his sentence under Cause No. 107 and his sentence under Cause No. 45 because Stannard "reported to a meeting with the presence of alcohol." Appellant's Appendix at 16, 26. On October 24, 2008, the State filed a second petition to revoke Stannard's probation under Cause No. 107 because Stannard "was unsuccessfully discharged from the Grace House and was directed to report directly to the Probation Office and [Stannard] never reported as instructed." Id. at 18.

The trial court held a probation revocation hearing on January 5, 2009 in connection with both Cause No. 107 and Cause No. 45. At the hearing, Stannard admitted to the allegations in the State's three petitions. At the conclusion of the probation revocation hearing, the trial court stated: "I'm gonna take this matter under advisement. . . . I wanna think about this one for a week." Transcript at 38. The trial court reconvened on January 12, 2009, and the trial court stated:

> When we were last in Court Mr. Stannard admitted to violating the terms of his probation as alleged in both cases [Cause No. 107 and Cause No. 45]. Evidence was, uh, presented regarding the appropriate disposition or sentence an' the Court took the matter, uh, under advisement because Mr. Stannard was previously in Reentry Court [and] the Court wanted to check with, uh, people in Reentry Court on whether or not, uh, Mr. Stannard would be appropriate to, uh, resume participation in Reentry Court. Uh, I've spoken to Reentry Court authorities, uh, they don't believe that Mr. Stannard, uh, would succeed in Reentry Court having failed previously . . . .

Id. at 41. The trial court asked the prosecutor and Stannard's counsel if the parties had any additional evidence or argument to present, and both responded that they did not. Id. at 41-42. Stannard did not object or move for a change of judge either when the trial court made its statement regarding obtaining information from "people in the Reentry Court or when the trial court asked if he had any additional argument. See id. The trial court then concluded:

> I'm gonna order you to serve your previously suspended sentence which I believe is a total of four (4) years . . . . Uh, I think it's actually the best sentence in this case. You need some time to dry out an' get some treatment that will be available to you through DOC. I hope you do get that treatment 'cause I think you can still succeed in life if you put your mind to it. I'm not sure you're convinced of that yourself at this point, but, uh, I think you can do it. It's jus' gonna take some time.

Id. at 42. The trial court ordered Stannard to serve the remainder of his previously suspended sentences of four years at the Department of Correction.

The sole issue is whether the trial court impermissibly relied on ex parte communications when it ordered Stannard to serve his previously suspended sentence at the Indiana Department of Correction. Stannard argues that the trial court improperly considered evidence outside of the record. The State argues that Stannard waived review of this issue by failing to object or move for a change of judge. We agree with the State.

Here, when the trial court made its statement regarding the additional information it obtained from "people in Reentry Court," Stannard failed to object or move for a change of judge to preserve the alleged error related to the ex-parte communication. Transcript at 41. Consequently, Stannard has waived his argument that the trial court improperly relied upon information it obtained during an ex-parte communication. See Matney v. State, 681 N.E.2d 1152, 1154 (Ind. Ct. App. 1997) (holding that the defendant was required to move for a change of judge to preserve an alleged error related to an ex-parte communication where the trial judge stated that she had spoken to the defendant's former probation officer and the defendant's counsel raised a general objection, but did not request that the judge disqualify herself), reh'g denied, trans. denied; see also Hulfachor v. State, 813 N.E.2d 1204, 1207 (Ind. Ct. App. 2004) (noting that "failure to object to allegedly unreliable information relied upon by the trial court in sentencing results in waiver of the issue for appeal" and holding that the defendant waived his argument that the trial court improperly considered evidence outside the record in

determining the defendant's sentence where the defendant failed to object and invited the error).[1]

For the foregoing reasons, we affirm Stannard's probation revocation.

Affirmed.

CRONE, J., and MAY, J., concur.

[1] We do note that in Hulfachor we nevertheless cautioned trial courts against looking outside the record for evidence in a sentencing hearing. 813 N.E.2d at 1207-1208.