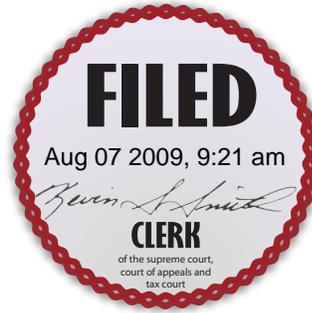


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**KIMBERLY A. JACKSON**  
Indianapolis, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ANGELA N. SANCHEZ**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

DEREK L. JORDAN, JR.,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 57A04-0902-CR-83

---

APPEAL FROM THE NOBEL SUPERIOR COURT  
The Honorable Michael J. Kramer, Judge  
Cause No. 57D02-0809-FB-1

---

**August 7, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Derek L. Jordan, Jr. appeals the revocation of his probation.

We affirm.

### ISSUE

Whether the evidence was sufficient to support the revocation of Jordan's probation.

### FACTS

On March 21, 2005, the State charged Jordan with Count I, class B felony conspiracy to manufacture methamphetamine;<sup>1</sup> and Count II, class D felony possession of pseudoephedrine.<sup>2</sup> He pleaded guilty as charged on July 14, 2005. On September 8, 2005, the trial court entered a judgment of conviction and sentenced Jordan to concurrent sentences of six years on Count I and eighteen months on Count II, with four years suspended to probation.

Also on September 8, 2005, the trial court entered an order of probation, requiring Jordan to pay \$1,756.00 in fines and costs, including a \$400.00 alcohol and drug fee, on or before April 1, 2007. The trial court, however, ordered that \$400.00 of the fine imposed be suspended upon Jordan "obtaining a substance abuse evaluation and successfully complet[ing] any recommended treatment program." (App. 28). The terms of his probation also required, *inter alia*, that Jordan maintain full-time employment; "not use, possess, or consume any alcohol (except in a lawful manner), narcotic, drug, or controlled substance unless prescribed by a physician or dentist"; and "submit to all drug

---

<sup>1</sup> Ind. Code §§ 35-41-5-2; 35-48-4-14.5.

<sup>2</sup> I.C. § 35-48-4-14.5.

and alcohol tests at [his] expense,” with “[t]wo or more dilute specimens [to] be considered a violation.” (App. 29). As a special condition of probation, the trial court further ordered that Jordan “immediately contact Noble County Court Services . . . for a substance use assessment and successfully complete any recommended treatment program.” (App. 29). It ordered that he pay the \$400.00 fee associated with the assessment in addition to “the costs of any program.” (App. 29). Finally, it ordered that he pay \$200.00 to his public defender. Jordan began serving his probation on September 3, 2006.

On September 16, 2008, the State filed a notice of probation violation, asserting that Jordan had failed to pay fines and costs in the amount of \$956.00; failed to pay his public defender; and failed to pay the \$400.00 fee for Noble County Court Services. It also asserted that he owed the \$200.00 fee to his public defender; \$90.00 in drug screening fees; and \$720.00 in probation user fees. Moreover, it asserted that Jordan failed to complete treatment as ordered; tested positive for methamphetamine on July 17, 2008; admitted to using methamphetamine on July 15, 2008; and “admitted to ingesting PCP (that he thought was Methamphetamine) on September 7, 2008.” (App. 40).

On September 24, 2008, Jordan, pro se, and the State entered into a drug court participation agreement (the “Agreement”). Pursuant to the Agreement, Jordan agreed to maintain full-time employment, attend four support group meetings per week, and abide by a 9:00 p.m. curfew. He further agreed that he may be revoked from the drug court program “at the discretion of the judge for violation(s) or noncompliance with program

conditions and terms,” after which he could be sentenced on the original charge. (App. 45).

The trial court held a hearing on September 24, 2008, during which Jordan admitted to using drugs. The trial court accepted the Agreement and continued sentencing, pending participation in drug court.

On October 15, 2008, the trial court sentenced Jordan to four days in jail for violating the terms of the Agreement.<sup>3</sup> On October 29, 2008, the trial court again found that Jordan had violated the Agreement by failing to verify his employment and missing group meetings. It therefore ordered that he be placed in a halfway house.

On November 5, 2008, the trial court granted Jordan permission to travel to Fort Wayne for a family emergency. On November 12, 2008, the State filed a drug court termination report, asserting that Jordan did not comply with the trial court’s order; rather, he went to his ex-wife’s residence. The State also asserted that Jordan had failed “to be honest” with the drug court and its officers; and had been “dishonest about his employment on at least two occasions, his curfew violation, treatment, and his whereabouts on November 7, 2008.” (App. 52). Following a hearing on November 12, 2008, the trial court ordered that Jordan be taken into custody for 120 days.

On December 17, 2008, the trial court held a sentencing hearing on Jordan’s probation violation, during which Jordan admitted to violating the terms of the Agreement. The trial court then imposed the previously suspended four-year sentence.

#### DECISION

---

<sup>3</sup> The record does not reveal the nature of the violation.

Jordan asserts that the evidence was insufficient to support the trial court's revocation of his probation. He argues that he "had shown significant progress in defeating his drug problems while enrolled in drug court," and "his failure to meet certain financial or treatment obligations either did not violate the terms of his probation or did not support revocation." Jordan's Br. at 6.

The decision to revoke probation is within the sole discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion. On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses. If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation.

*Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008) (internal citations omitted).

"A trial court may revoke a person's probation upon evidence of the violation of any single term of probation." *Washington v. State*, 758 N.E.2d 1014, 1-17 (Ind. Ct. App. 2001). However, "[p]robation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay." I.C. § 35-38-2-3(f).

Notwithstanding Jordan's failure to pay his court-ordered fines and fees, the record reveals that he violated his probation by testing positive for methamphetamine on one occasion and using drugs on at least two occasions. Furthermore, he failed to attend the requisite number of group meetings; did not verify his employment; and violated his curfew. He also violated the trial court's order allowing him to visit his father by traveling to his ex-wife's residence and subsequently lying about his whereabouts. We

therefore find there is sufficient evidence to support the conclusion that Jordan violated the conditions of his probation.

Affirmed.

ROBB, J., and MATHIAS, J., concur.