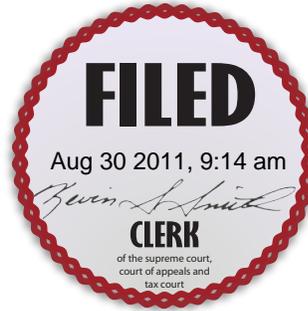


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAY A. THOMAS )

Appellant-Defendant, )

vs. )

No. 36A01-1011-CR-00583

STATE OF INDIANA )

Appellee-Plaintiff. )

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APPEAL FROM THE JACKSON CIRCUIT COURT  
The Honorable William E. Vance, Judge  
Cause No. 36C01-0808-FC-00050

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**AUGUST 30, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Jay A. Thomas (Thomas), appeals the trial court's revocation of his probation.

We affirm.

### ISSUE

Thomas raises two issues on appeal, which we consolidate and restate as follows:  
Whether the trial court abused its discretion in revoking his probation.

### FACTS AND PROCEDURAL HISTORY

On August 11, 2008, the State filed an Information charging Thomas with nonsupport of a dependent child, a Class C felony, Ind. Code § 35-46-1-5. At the time, Thomas also had a case pending under cause number 36C01-0709-FD-00305 (Cause 305) and was the subject of previous paternity actions filed under cause numbers 36C01-9509-JP-00129 (Cause 129), 36C01-0203-JP-00071 (Cause 71), and 36D02-0802-JP-00640 (Cause 640).

On April 8, 2009, Thomas entered into a plea agreement with the State, thereby pleading guilty to nonsupport of a dependent child in exchange for a sentence of four years, with two years suspended and six years of probation. The State also assigned Thomas the following terms of probation, among others: that Thomas would pay (1) \$35.00 per week for child support, plus \$15.00 per week towards the \$23,779.28 he owed in arrearage for his son, J.T.; (2) \$26.00 per week for child support, plus \$10.00 per week towards the \$9,308.00 he owed in arrearage pursuant to Cause 71; and (3) \$40.00 per week for child support, plus \$15.00 per week towards the \$30,819.04 he owed in arrearage pursuant to Cause 640. On

April 30, 2009, the trial court accepted Thomas' plea agreement and sentenced him according to its terms. The trial court also ordered Thomas' sentence to run concurrent to his sentence in Cause 305.

On August 14, 2009, the trial court placed Thomas on probation subject to the above terms. On November 20, 2009, the State filed a petition to revoke Thomas' probation, alleging that Thomas had failed to pay child support as required. Subsequently, on October 13, 2009, the State filed an amended petition to revoke probation adding an allegation that Thomas had committed new criminal offenses. On October 18, 2010, the trial court held a revocation hearing and found that Thomas had not committed the alleged criminal offenses. However, the trial court found that Thomas had failed to pay child support, so the trial court ordered Thomas' probation revoked and his previously suspended sentence executed.

Thomas now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Thomas argues that the trial court abused its discretion in revoking his probation because the State failed to prove that his failure to pay child support was reckless, knowing, or intentional, and also because the trial court failed to consider his efforts and ability to make the payments. On appeal, we review a trial court's sentencing decisions for a probation violation under an abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). A trial court has abused its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

In Indiana, a person's probation may be revoked if the person has violated a condition

of probation during the probationary period. I.C. § 35-38-2-3(a)(1). We view probation as a matter of grace left to the trial court's discretion, not a right to which a defendant is entitled. *Prewitt*, 878 N.E.2d at 188. Therefore, a probationer faced with a petition to revoke his probation is not entitled to the full panoply of rights he enjoyed before his conviction. *Cooper v. State*, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009). For instance, the State only needs to prove an alleged violation of probation by a preponderance of the evidence. *Id.*

Probation revocation is a two-step process. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). First, the court must make a factual determination concerning whether a violation of a condition of probation has occurred. *Id.* Second, if the trial court finds a violation, the trial court must determine whether the violation warrants revocation of the probation. *Id.* When a probationer admits to the violation, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* At this point, the probationer must be given the opportunity to present evidence that explains and mitigates his violation. *Id.*

However, when a probation revocation case involves the payment of financial obligations, the burden of proof shifts between the parties in the two-step inquiry. *Runyon v. State*, 939 N.E.2d 613 (Ind. 2010). In *Runyon*, our supreme court held that in the first step of the inquiry, the State has the burden to prove that (1) the probationer violated a term of probation and (2) that, if the term involved a payment requirement, the failure to pay was reckless, knowing, or intentional. *Id.* at 617. Then, the probationer has the burden to show facts related to an inability to pay and indicating "sufficient bona fide efforts" to pay so as to

persuade the trial court that further imprisonment should not be ordered. *Id.* In *Runyon*, Runyon’s express admission that he had violated the conditions of his probation and failed to make required payments was sufficient to establish by a preponderance of the evidence that he had violated his probation and that his failure to pay was knowing, if not also intentional. *Id.*

Here, Thomas’ circumstances fall directly within the scope of *Runyon*. Thomas expressly admitted that he failed to pay child support, which is sufficient to show that he “knowingly” failed to pay, according to *Runyon*. See *Runyon*, 939 N.E.2d at 617. In regards to the second stage of our inquiry, Thomas repeatedly conceded that he understood his child support obligation and failed to pay it. In addition, even though Thomas’ employment was sporadic, he did not claim that he did not have any income during that time period. As the trial court noted, Thomas merely chose to pay back other debts rather than his child support. It is also notable that Thomas failed to pay *any* of his child support obligation. Accordingly, we find that Thomas failed to establish his inability to pay or that he made sufficient *bona fide* efforts to pay, so we conclude that the trial court did not abuse its discretion in revoking his probation.

### CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in revoking Thomas’ probation.

Affirmed.

NAJAM, J., and MAY, J., concur.