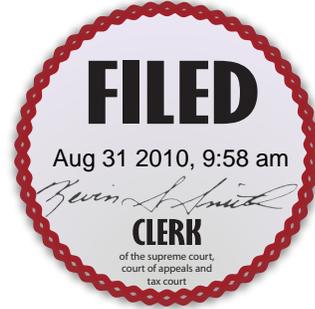


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

RICHARD WALKER
Anderson, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY WILLIAM WOOLUM, JR.,)

Appellant-Defendant,)

vs.)

No. 48A02-0912-CR-1231

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0601-FC-4

August 31, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Timothy William Woolum, Jr. (“Woolum”), appeals the trial court’s order revoking his probation and ordering him to serve the portion of his sentence that was previously suspended to probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 23, 2006, Woolum pleaded guilty to three charges: possession of cocaine as a Class C felony; possession of a controlled substance as a Class D felony; and possession of marijuana as a Class A misdemeanor. The trial court sentenced him to the Department of Correction for a period of six years for the Class C felony, with four years executed and two years suspended to probation. The trial court also sentenced him to three years executed for the Class D felony and one year executed for the Class A misdemeanor, with all three sentences to run concurrently. As part of the sentencing order, the trial court stated that in addition to the standard conditions of probation, certain special conditions of probation would also apply, including abstaining from the use of illicit drugs and submitting to random drug screens. *Appellant’s App.* at 23. On November 20, 2008, after having served his executed sentence, Woolum was placed on probation.

On October 16, 2009, Justin Eubanks (“Eubanks”), a probation officer for the Madison County Adult Probation Department, visited Woolum’s residence for a

“probation check.”¹ *Tr.* at 25. Upon entering the residence, Eubanks encountered Woolum and two female occupants. Eubanks’s initial search of the residence revealed “baggies,” a pipe containing residue that field-tested positive for marijuana, and a locked safe.² *Id.* at 28.

While the “probation check” was still in progress, Eubanks was joined by Brett Wright (“Wright”), an officer with the Madison County Sheriff’s Department and his canine, Diesel (the “canine”), who had been trained to give a positive indication in the presence of drugs. *Id.* at 7. Eubanks and Woolum stepped outside in order to allow the canine “to sniff around the inside of the house.” *Id.* at 30. Immediately upon entering the residence, the canine gave a positive indication to the presence of marijuana. While outside, Woolum began moving away from Eubanks, and when told to move closer, Woolum “took off running.” *Id.*

On November 17, 2009, the State filed an Amended Notice of Violation of Probation alleging, in part, that Woolum had violated his probation by possessing marijuana. At the evidentiary hearing on November 23, 2009, the trial court took judicial

¹ At the probation revocation hearing, Eubanks described a “probation check” as follows:

We go to the person’s home, a lot of times we get calls, anonymous calls, tips, different stuff like that or we just do a general check of welfare or well-being of a person on probation or a defendant. So we go to their house. Typically, we give them a breathalyzer. We ask them to show us their living quarters. We take a quick look around. If anything’s found police is [sic] notified. If nothing is found it’s usually it’s good night, good evening, and we take off.

Tr. at 25-26.

² At the evidentiary hearing, significant evidence was presented regarding the contents of the safe. The trial court, however, limited its decision to revoke Woolum’s probation on evidence found outside the safe. *Tr.* at 55. Therefore, we do not address the contents of the safe.

notice of its probation and sentencing orders. Eubanks and Wright each testified regarding the details of the search and the items found in Woolum's residence.

Following the evidentiary hearing, the trial court revoked Woolum's probation and ordered him to serve the previously suspended two-year portion of his sentence. Woolum now appeals.

DISCUSSION AND DECISION

A probation revocation hearing is in the nature of a civil proceeding and, therefore, a violation need only be proven by a preponderance of the evidence. *Figures v. State*, 920 N.E.2d 267, 272 (Ind. Ct. App. 2010). This court will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* Rather, we look to the evidence most favorable to the judgment. *Id.* If there is substantial evidence of probative value to support the trial court's decision that the probationer is guilty of a violation, we will affirm its decision to revoke probation. *Id.*

Woolum appeals the revocation of his probation, in part, challenging the trial court's finding that he violated the conditions of his probation by possessing marijuana. *Appellant's App.* at 49. Specifically, he contends that, because there were two other individuals present in the residence when the canine alerted to the presence of marijuana and no marijuana was found on his person, the evidence did not support a finding that he possessed marijuana. We disagree.

The canine indicated to the presence of drugs in the residence. A search of Woolum's residence revealed two baggies and a pipe containing marijuana residue. Woolum, as the owner of the residence, had control over the premises where these items

were found. *See Allen v. State*, 787 N.E.2d 473, 482 (Ind. Ct. App. 2003) (house or apartment used as residence is controlled by person who lives in it, and that person may be found in control of any drugs discovered therein), *trans. denied*. Additionally, when the canine arrived to search for drugs, Woolum fled from the scene. *See Jacobs v. State*, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004) (defendant’s flight from scene of crime may be considered circumstantial evidence of guilt). The trial court reviewed the evidence not for the purpose of convicting Woolum of the crime of possession, but only for the purpose of determining by a preponderance of the evidence that Woolum had marijuana in his possession in violation of his probation.

Finding, as we do, substantial evidence of probative value to support the trial court’s decision that Woolum possessed marijuana in violation of the conditions of his probation, we affirm the trial court’s judgment to revoke his probation.³

Affirmed.

RILEY, J., and BAILEY, J., concur.

³ The trial court also revoked Woolum’s probation on the fact that he tested positive for cannabinoids—a finding derived from evidence admitted at the hearing as State’s Exhibit 2. On appeal, Woolum also challenges this finding and contends that the trial court abused its discretion by admitting State’s Exhibit 2 into evidence. Because a trial court may revoke a person’s probation upon evidence of the violation of a single term of probation, we do not reach that issue. *Figures v. State*, 920 N.E.2d 267, 272 (Ind. Ct. App. 2010).