



Hunter O. Leaming (“Leaming”) appeals from the trial court’s order revoking his probation in Cause Number 54D02-0802-FD-643 (“Cause Number 643”). Leaming presents the following restated issue for our review: whether the trial court abused its discretion by revoking Leaming’s probation.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Leaming pleaded guilty to two counts of possession of child pornography,<sup>1</sup> each as a Class D felony in Cause Number 643. The trial court sentenced Leaming on each count to three years imprisonment and ordered the sentences to be served consecutively. One-half year of each sentence was to be served as a direct commitment to work release/community corrections, and the balance of each sentence was suspended to probation. More simply put, Leaming was to serve one year on work release followed by five years of probation.

On December 14, 2009, the State filed a community corrections violation notice. On December 23, 2009, the State charged Leaming with three counts of performing sexual conduct in the presence of a minor<sup>2</sup> and two counts of public indecency<sup>3</sup> under Cause Number 54D02-0912-FD-5275 (“Cause Number 5275”). On March 3, 2010, Leaming entered into an agreement with the State whereby he would plead guilty to two counts of performing sexual conduct in the presence of a minor in Cause Number 5275 and would admit the community

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<sup>1</sup> See Ind. Code § 35-42-4-4(c).

<sup>2</sup> See Ind. Code § 35-42-4-5.

<sup>3</sup> See Ind. Code § 35-45-4-1.

corrections violations in Cause Number 643.

On April 9, 2010, at the beginning of the plea hearing and after reviewing the plea agreement, the trial court noted that only community corrections violations had been filed against Leaming in Cause Number 643. *Tr.* at 3-4. Both the State and Leaming's attorney agreed that Leaming would be admitting to the community correction violation in Cause Number 643. *Id.* After that exchange, Leaming admitted the community corrections violation and pleaded guilty to two counts of performing sexual conduct in the presence of a minor in Cause Number 5275. The factual basis that supported the community corrections violation was that Leaming did not make his whereabouts known to community corrections on December 7, 2009, from 1:18 p.m. to 3:36 p.m., and had committed new crimes in violation of community corrections rules. The factual basis for Leaming's guilty plea in Cause Number 5275 was that Leaming had masturbated in front of children on December 4 and December 7, 2009.

The trial court sentenced Leaming to time-served on the community corrections violation and to three years of imprisonment for each of the Class D felonies to be served concurrently to each other but consecutively to the sanction for the community corrections violations.

On April 16, 2010, the State filed a petition to revoke or modify probation under the Cause Number 643, alleging that Leaming had violated the terms of his probation by being convicted of the offenses in Cause Number 5275 and that he had viewed pornography on July 8, August 15, and November 18, 2009, using computers and a gaming unit. On May 11,

2010, Leaming filed a motion to dismiss the petition. After additional pleadings were filed by the parties, the trial court denied Leaming's motion to dismiss on November 23, 2010. Leaming's motion to correct error that was filed on December 28, 2010 was denied on January 7, 2011. After a hearing on the merits of the State's petition, the trial court revoked Leaming's probation in Cause Number 643 and ordered him to serve five years executed for the probation violation. Leaming now appeals.

### **DISCUSSION AND DECISION**

Leaming appeals from the trial court's order revoking his probation. 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. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). On review, we consider only the evidence most favorable to the judgment without reweighing the evidence or judging the credibility of the witnesses. *Id.* 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. *Id.* at 639-40.

Leaming contends that the trial court erred by revoking his probation in Cause Number 643 on grounds of *res judicata* because the allegations of the petition to revoke his probation had already been litigated in the community corrections violation hearing, and that the State could have raised the probation revocation issues at that prior hearing, but did not. He further supports his argument by contending that fundamental fairness and the language of the plea agreement bar revocation of his probation in Cause Number 643. We disagree.

The language of Leaming's plea agreement contains no provision regarding the disposition of any action to revoke his probation in Cause Number 643. In fact, no such petition was pending at the time the plea agreement was negotiated. Although the plea agreement states that Leaming would "admit probation violations in [Cause Number 643]", the only matter pending before the trial court was a plea agreement reached between the State and Leaming regarding the Cause Number 5275 offenses and the admission of violations of the conditions of his placement in community corrections in Cause Number 643. *Appellant's App.* at 82. Both defense counsel and the State agreed that although the plea agreement made reference to probation violations, Leaming was admitting to only violations of his placement in community corrections.

In revoking Leaming's probation under Cause Number 643, the trial court found that he had viewed pornography on three separate occasions in violation of the conditions of his probation. A defendant's probation may be revoked upon evidence of a violation of any single term of probation. *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). Thus, revocation of Leaming's probation on this basis alone was supported by the record.

However, we will also address Leaming's argument that the trial court abused its discretion by finding that *res judicata* did not bar revocation of his probation under Cause Number 643 for his convictions under Cause Number 5275. The doctrine of *res judicata* bars a later suit when an earlier suit resulted in a final judgment on the merits, was based on proper jurisdiction, and involved the same cause of action and the same parties as the later suit. *Annes v. State*, 789 N.E.2d 953, 954 (Ind. 2003). Furthermore, this doctrine prevents

the repetitious litigation of that which is essentially the same dispute. *Sweeney v. State*, 704 N.E.2d 86, 94 (Ind. 1998). Keeping that in mind, we find that the trial court did not abuse its discretion by also considering Leaming's convictions under Cause Number 5275 as support for the probation revocation in Cause Number 643. The commission of another crime while on probation may result in a conviction for such crime and a revocation of probation without violating double jeopardy or *res judicata*. See *Lightcap v. State*, 863 N.E.2d 907, 909-10 (Ind. Ct. App. 2007) (not error for court to sentence defendant for conviction and then revoke defendant's probation on prior conviction); *Justice v. State*, 550 N.E.2d 809, 812 (Ind. Ct. App. 1990) (violation of probation condition does not constitute an adjudication of guilt for purposes of double jeopardy). We find no abuse of discretion here.

Affirmed.

BAKER, J., and BROWN, J., concur.