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FILED
Sep 25 2009, 9:22 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

JESUS G. CARDENAS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0906-CR-568
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0309-FA-122

September 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jesus G. Cardenas appeals the trial court's revocation of probation.

We affirm.

ISSUE

Whether the trial court erred when it found Cardenas violated probation.

FACTS

On September 29, 2003, the State charged Cardenas with two counts of child molesting, one count as a class A felony and one count as a class C felony. On February 14, 2005, a written plea agreement was tendered to the trial court, whereby Cardenas agreed to plead guilty to a single count of child molesting, as a class C felony. On March 28, 2005, the trial court sentenced Cardenas to "a term of imprisonment of eight (8) years with four (4) years suspended." (App. 20). The suspended term was ordered served on "formal, supervised probation." (App. 20). On October 5, 2005, Cardenas signed the terms of his probation, which required that he notify his probation officer "of any changes in home situations" and "have only one residence and one mailing address at a time," (App. 26), and further required him to participate in a sex offender program and counseling.

On September 12, 2008, the probation department filed a petition for revocation of probation, alleging that Cardenas had failed to make payments as ordered for the sex offender program; to attend the program as directed; and to attend any counseling sessions. On November 19, 2008, the probation department filed another petition for

revocation, alleging that Cardenas violated "Rule #2 of the Conditions of Probation," which stated that he must "notify [his] probation officer within 24 hours prior to any change of address . . . ." (App. 39).

On February 9, 2009, the trial court held an evidentiary hearing. It took judicial notice of "various orders associated with previous violations of probation committed by" Cardenas. (Tr. 4). Cardenas' probation officer, Thomas Lawson, testified that after "the end of October, 2008," he was "unable to locate Mr. Cardenas"; and that despite being scheduled to meet with Lawson every three weeks, Lawson had no meeting with and "no contact" from Cardenas during the month of November 2008. (Tr. 6). Lawson further testified that on November 3, 2008, he went to the address in Upland where Cardenas reported living; he saw a "For Rent sign," and Cardenas was not there; and Cardenas' girlfriend's mother advised him that Cardenas "had moved . . . out of the county." (Tr. 12, 8). Lawson also testified that Cardenas did not contact him during the month of December, 2008. Finally, Lawson testified that as of February 9, 2009, Cardenas had never reported to him that he had moved from the Upland address. Cardenas' girlfriend's mother also testified at the probation hearing that Cardenas moved from the Upland address on "October 31st of 2008," and that she believed he was currently living in Marion. (Tr. 18).

Detective Jamie Moore, who manages the sex offender registry for the county sheriff's office, testified that in January of 2008, Cardenas registered his address in Upland, and that he did not report a change in his address. Moore learned that in early February of 2009, Cardenas had advised in a court proceeding that he was living at an

address in Marion. Moore went to the Marion address, belonging to Cardenas' sister-in-law Courtney Smith, but Cardenas was not there. Smith testified that Cardenas never lived at her residence, and she did not know where he was living.

The trial court found that "the State has proven by a preponderance of the evidence" that Cardenas "did not notify his probation officer within twenty-four (24) hours prior to the change of address." (Tr. 53). It ordered him to "serve one (1) year in the Grant County Jail, of the four (4) that were previously suspended," with the remaining sentence served on probation. *Id.*

DECISION

The violation of probation is a matter established by the preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). In reviewing the trial court's decision to revoke probation, we consider only the evidence most favorable to the judgment – "without reweighing the evidence or judging the credibility of witnesses." *Id.* "If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm" the trial court's decision to revoke probation. *Id.*

Cardenas argues that there was insufficient evidence that he violated a rule of his probation. Specifically, he argues there is a lack of "sufficient evidence that [he] had moved" from the Upland address "without having told the authorities." Cardenas' Br. at 6. We are not persuaded.

Cardenas directs us to various testimony to the effect that where he was residing between October 31, 2008, and the date of the revocation hearing was not clearly

established. However, the testimony most favorable to the trial court's judgment indicated that after October 31, 2008, Cardenas was not residing at the Upland address he had provided to the probation department, and that he "did not notify his probation officer within twenty-four (24) hours prior to" changing his residence from that address. (Tr. 53).

Affirmed.

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