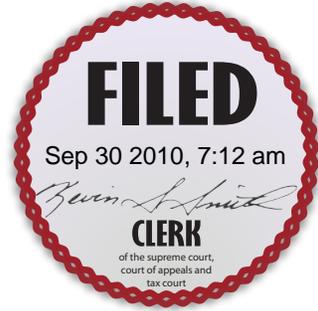


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JACOBO SANCHEZ-VENEGAS, )

Appellant-Defendant, )

vs. )

No. 09A05-1001-CR-107

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE CASS CIRCUIT COURT  
The Honorable Leo T. Burns, Judge  
Cause No. 09C01-0802-FC-7

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**September 30, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Jacobo Sanchez-Venegas appeals the trial court's revocation of probation.

We affirm.

### ISSUE

Whether the trial court abused its discretion when it found that Sanchez-Venegas violated probation.

### FACTS

On February 20, 2009, the State charged Sanchez-Venegas with having committed the offense of criminal confinement, as a class C felony, which occurred on February 17, 2008. On March 5, 2009, Sanchez-Venegas signed a plea agreement whereby he agreed to plead guilty to residential entry, as a class D felony; and the State would dismiss the class C felony criminal confinement charge and recommend a sentence of eighteen months – “suspended on probation.” (App. 78). The agreement was tendered to and accepted by the trial court on March 5, 2009, whereby, the trial court sentenced Sanchez-Venegas to serve eighteen months, all “suspended on Probation.” (*Id.* at 81). On the same day Sanchez-Venegas signed the conditions of his probation, which included the requirement that he report to the Probation Department as directed.

On September 15, 2009, the Probation Department filed a petition alleging that Sanchez-Venegas had violated his probation by failing to report for his appointment on September 9, 2009. On December 10, 2009, the trial court held an evidentiary hearing.

Jill Shively VanHorn testified that she was Sanchez-Venegas' probation officer and had met with him on three occasions, with the terms of his probation being expressly

explained to him at the first meeting. She specifically testified that she advised Sanchez-Venegas that a condition of his probation was that he report at the times directed; that if he was not “able to be there,” he “needed to call the office and speak with [her] directly to reset”; and that if he was “not able to call in [himself], . . . to have one person” to whom he had given her “name and number” call and “inform [her] of” any “medical or legal” emergency that prevented his attending the appointment. (Tr. 17). She further testified that she had advised Sanchez-Venegas of his September 9, 2009, appointment, and that he had failed to report or arrange for someone to contact her as to why he could not keep his appointment. She testified that her office received a message on September 23, 2009, from the brother of Sanchez-Venegas that advised he had been in the Carroll County jail “for the last 2 weeks.” (Ex. A).

Sanchez-Venegas testified that he had been arrested in Carroll County on September 8, 2009, and incarcerated there since that time. He admitted that his probation officer had “told [him] that if [he] couldn’t make a meeting that it was up to [him] to either contact her or have one other person contact her,” and “to give her number and her name to somebody that would call, someone that [he] knew in [his] life that would call in case [he] couldn’t make it to a meeting.” (Tr. 39, 40). He further admitted that the probation officer “gave the number to [him]” for use in the event of his inability to report for an appointment. (*Id.* at 40). Sanchez-Venegas testified that he lived with his brother; and that on September 8<sup>th</sup> he talked to his brother, and his brother knew that he had been arrested. Nevertheless, he testified, it was not until September 23<sup>rd</sup> that he asked his brother to contact his probation officer and inform her where he was.

The trial court found that the State had “proven by a preponderance of the evidence that . . . Sanchez-Venegas violated the terms and conditions of probation by failing to appear for a scheduled appointment on September 9, 2009.” (*Id.* at 45). It ordered him to serve “18 months on probation in this cause upon his release from incarceration.” (App. 10).

### DECISION

The decision to revoke probation is within the sole discretion of the trial court. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). Its decision in that regard is reviewed on appeal for abuse of discretion. *Id.* On review, we consider only the evidence most favorable to the judgment, and we neither weigh that evidence nor judge the credibility of 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 affirms its decision to revoke probation. *Id.* at 639-640.

Sanchez-Venegas argues that the trial court abused its discretion when it found that he had violated his probation because he “explained . . . that he did not intend to violate his probation” but “was incarcerated” in Carroll County; that he “could not leave” the jail because he had been placed on an immigration hold; that he “was unable to call the probation officer collect from” the jail, but had told a judge; thus he “d[id] everthing he possibly could to notify the probation officer that he could not be there” for the September 9<sup>th</sup> appointment. Sanchez-Venegas’ Br. at 7. His argument asks that we reweigh the evidence and judge witness credibility, which we do not do. *See Woods*, 892 at 639.

The evidence most favorable to the trial court's judgment is as follows. Sanchez-Venegas knew that he was to report to the probation department on September 9, 2009, and he did not do so. He admitted that his probation officer had explained to him the need to arrange for an individual to notify her should he be unable to attend his appointment. He admitted that on September 8<sup>th</sup>, the day before his probation department appointment, he talked with his brother -- with whom he had been living -- and informed his brother of his arrest and incarceration, but that he did not request that his brother contact the probation department about his incarceration until two weeks later. Inasmuch as substantial evidence of probative value supports the trial court's decision that Sanchez-Venegas violated his probation, we find no abuse of discretion here. *See Wood*, 892 N.E.2d at 639-640.

Affirmed.

BRADFORD, J., and BROWN, J., concur.