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FILED
Oct 20 2009, 9:31 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

ARTHUR WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0904-CR-236
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0109-CF-293

October 20, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Madison Superior court revoked the probation of Arthur Williams ("Williams") after finding that Williams violated the terms of his probation. Williams appeals and claims that the evidence is insufficient to support the trial court's decision. We affirm.

Facts and Procedural History

At the time relevant to this appeal, Williams was on probation in Cause No. 48D03-0109-CF-293 ("Cause 293") after having been convicted of Class B felony robbery, Class D felony theft, and Class B misdemeanor false informing. Williams was also on probation in Cause No. 48D03-0612-FB-553 ("Cause 553") after having pleaded guilty to aiding, inducing, or causing Class D felony theft.

On June 14, 2008, a third party, Sam Weist, took guns that he had stolen from his father to an apartment in Anderson, Indiana, in an attempt to sell the weapons. Among the people in the apartment were Williams and his brother Markees Owens ("Owens"), also a convicted felon. Weist showed Williams a .40 caliber Berretta handgun, which Williams took and walked upstairs. Weist followed Williams upstairs, where Williams gave the handgun to a man Weist did not know. This individual cocked the handgun, pointed it at Weist, and did not return the gun to him.

On June 24, 2008, Nick Crawley ("Crawley") and Sean Fesmire ("Fesmire") drove to the same Anderson apartment where the gun theft had occured to visit friends. Among the people at the apartment were Williams, his brother Owens, and another man whom they knew only as "Eramus." As Fesmire and Crawley prepared to leave, Eramus asked if he could catch a ride with them. They agreed, and drove to a certain alley as

requested by Eramus. When they arrived at the alley, Eramus got out of the car. Williams, wearing a green bandana over his face and brandishing a handgun, then approached the car and pointed the gun at Crawley's head. Williams also jabbed the butt of the gun into Fesmire's head and demanded that Crawley and Fesmire give him their money. Crawley and Fesmire complied, and Williams fled. Crawley and Fesmire then quickly called the police. At the police station, both men identified Williams as the gunman.

As a result of these incidents, the State filed notices of probation violation in Cause 293 and Cause 553, alleging that Williams had violated the terms of his probation by associating with a convicted felon, by possessing a firearm, and by committing the new offenses of armed robbery, battery by means of a deadly weapon, and pointing a firearm. At the conclusion of a revocation hearing held on February 19, 2009, the trial court found that Williams had violated the terms of his probation and revoked Williams's probation in both Cause 293 and Cause 553. Williams now appeals.

Discussion and Decision

A defendant is not entitled to serve a sentence in probation. Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). Instead, probation is a matter of grace and a conditional liberty that is a favor, not a right. Id. Because a revocation hearing is in the nature of a civil proceeding, the alleged violation need be proven only by a preponderance of the evidence. Id. On appeal, we consider only the evidence most favorable to the trial court's judgment, and we will not reweigh the evidence or judge the credibility of witnesses. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). 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 its decision to revoke probation. Lightcap, 863 N.E.2d at 911.

Here, Williams claims that there was insufficient evidence to show that he violated the terms of his probation by being in possession of a firearm. We disagree. Weist testified that Williams took one of the guns Weist had stolen from his father and took it upstairs, where he gave it to the man who then robbed Weist. From this, the trial court could conclude that Williams possessed a firearm in violation of the terms of his probation.

There was also evidence from which the trial court could conclude that Williams associated with a known felon. Owens admitted to being a convicted felon and testified that he lived with his brother Williams at their mother's apartment. Williams was also seen at the apartment with Owens by Weist, Crawley, and Fesmire. Williams's probation officer testified that Williams did not receive special permission to associate with his brother. Williams explained that he was simply unaware that he was not permitted to associate with his brother. From this, the trial court could conclude that Williams violated the terms of his probation by associating with a known felon.

Lastly, there was sufficient evidence for the trial court to conclude that Williams violated the terms of his probation by committing new criminal offenses. When the State alleges that a probationer violated the terms of his probation by committing a new criminal offense, the State need not show that a defendant was actually convicted of a crime in order for the trial court to revoke probation. Lightcap, 863 N.E.2d at 911.

Instead, a trial court may revoke probation where there is probable cause to believe that the defendant violated a criminal law. Id.

Here, both Crawley and Fesmire testified that Williams robbed them at gunpoint. Crawley testified that Williams pointed the gun at his head, and Fesmire testified that Williams jabbed the gun into Fesmire's head. Although neither victim initially told the police that Williams was their assailant, they both identified Williams from a photo shortly after the robbery. Moreover, both men testified at the revocation hearing that Williams was indeed the one who robbed them at gunpoint. From this, the trial court could conclude that there was probable cause to believe that Williams violated the terms of his probation by committing the offenses of armed robbery, battery by means of a deadly weapon, and pointing a firearm. Williams's appellate argument to the contrary is little more than a request that we reweigh the evidence, which we will not do. See Cox, 706 N.E.2d at 551.

Affirmed.

DARDEN, J., and ROBB, J., concur.