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IN THE
COURT OF APPEALS OF INDIANA

KATIE HERRERA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-1106-CR-286
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Stephen Bowers, Judge
Cause No. 20D02-0905-FC-87, 20D02-0907-FD-48 & 20D02-1103-FD-8

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Katie Herrera (Herrera), appeals the trial court's revocation of her probation for her convictions for Count I, forgery, a Class C felony, Ind. Code § 35-43-5-2, and Count II, theft, a Class D felony, I.C. § 35-43-4-2.

We affirm.

ISSUE

Herrera raises one issue on appeal, which we restate as follows: Whether the trial court denied her due process when it failed to hold a hearing to establish a factual basis for her guilt before revoking her probation for theft.

FACTS AND PROCEDURAL HISTORY

On November 23, 2009, Herrera pled guilty to forgery as a Class C felony, I.C. § 35-43-5-2 (Cause FC-87), and theft as a Class D felony, I.C. § 35-43-4-2 (Cause FD-48). On December 21, 2009, the trial court sentenced Herrera to 6 years with 4 years suspended in Cause FC-87 and to two years executed in Cause FD-48, with the sentences to run consecutively. Herrera started work release on June 3, 2010 and was placed on electronic monitoring on July 1, 2010.

In February of 2011, Herrera complained of chest pains and was transported to a hospital by ambulance along with an officer. The officer needed to return to Work Release, and he informed Herrera to contact Work Release when she was discharged from the hospital. Herrera failed to return or to contact the facility. On March 7, 2011, the trial court conducted an initial hearing regarding Herrera's probation violation for

being absent from community corrections without permission. Herrera admitted to the violation, and the trial court set a sanctions hearing for April 4, 2011.

On March 22, 2011, the State filed an Information charging Herrera with escape, a Class D felony, I.C. § 35-44-3-5(c) (Cause FD-8). On April 4, 2011, Herrera pled guilty to the escape charge, and the trial court continued the sanctions hearing on the probation violations so that it could impose sanctions for the violations on the same day as Herrera's sentencing for escape. The State also told the trial court at the April 4, 2011 hearing that Herrera had admitted to violating her probation in Cause FD-48.

On May 23, 2011, the trial court held a hearing and revoked Herrera's probation in both Causes FC-87 and FD-48. The trial court ordered Herrera to serve the balance of her sentences for both causes, with the sentences to run consecutively.

Herrera now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Herrera argues that the trial court denied her due process because, although she gave a factual basis and made an admission as to violating her probation in Cause FC-87, she was not given an initial hearing or an opportunity to admit or deny the allegations made by the probation department in Cause FD-48. On appeal, we review a trial court's sentencing decisions for probation violations under an abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). A trial court has abused its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

In Indiana, a person's probation may be revoked if the person has violated a condition of probation during the probationary period. I.C. § 35-38-2-3(a)(1). We view probation as a matter of grace left to the trial court's discretion, not a right to which a defendant is entitled. *Prewitt*, 878 N.E.2d at 188. Thus, a probationer faced with a petition to revoke her probation is not entitled to the full panoply of rights she enjoyed before the conviction. *Cooper v. State*, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009). For instance, the State only needs to prove an alleged violation of probation by a preponderance of the evidence. *Id.*

The United States Supreme Court has held that the Due Process Clause applies to probation revocation hearings. *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 1759-60, 36 L.E.2d 656 (1973) (citing *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.E.2d 484 (1972)). The due process rights of a probationer include: "written notice of the claimed violations, disclosure of the evidence against him, an opportunity to be heard and present evidence, the right to confront and cross-examine witnesses, and a neutral and detached hearing body." *Robinson v. State*, 955 N.E.2d 228, 231-32 (Ind. Ct. App. 2011) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh'g denied*). We have held, though, that when a defendant admits to a violation, the procedural due process safeguards and an evidentiary hearing are unnecessary. *Davis v. State*, 916 N.E.2d 736, 739 (Ind. Ct. App. 2009), *trans. denied.*

Here, Herrera admits that she failed to object to the trial court's failure to hold an evidentiary hearing before revoking her probation, which is a ground for waiver on

appeal. *See Montano v. State*, 649 N.E.2d 1053, 1059 (Ind. Ct. App. 1995), *trans. denied.* However, she argues that her claim falls within the fundamental error doctrine. Under this doctrine, an issue may be raised for the first time on appeal if the trial court's error was "so prejudicial to the rights of a defendant that a fair trial [was] rendered impossible." *Benefield v. State*, 945 N.E.2d 791, 801 (Ind. Ct. App. 2011) (quoting *Perez v. State*, 872 N.E.2d 208, 210 (Ind. Ct. App. 2007), *trans. denied).* The Indiana Supreme Court has recently emphasized that the fundamental error exception is "extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (quoting *Matthews v. State*, 849 N.E.2d 578, 587 (Ind. 2006)).

We conclude that the trial court did not prejudice Herrera or cause her substantial harm. Herrera concedes that she admitted to her violation in Cause FC-87 and pled guilty to escape. The terms of her probation for both Causes FC-87 and FD-48 stipulated that she "[should] not violate any law or disregard any Court order." [1] (Appellant's App. p. 47.) Therefore, her conviction for escape constituted a violation of her probation in Cause FD-48. Even if the trial court had held an evidentiary proceeding, the result would have been the same due to that conviction. Moreover, the trial court consolidated the two probation violations for sentencing before it revoked Herrera's probation in Cause FD-48.

[1] Herrera argues that although her escape conviction violated her probation in Cause FC-87, nothing in the record supports the conclusion that it also violated her probation in Cause FD-48. In response, we note that the terms of her probation are listed as being the terms for both Causes, not just Cause FC-87.

In light of these circumstances, we conclude that the trial court did not commit fundamental error in revoking Herrera's probation, and Herrera waived her claim by failing to object before the trial court. Therefore, the trial court properly revoked her probation.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly revoked Herrera's probation.

Affirmed.

FRIEDLANDER, J. and MATHIAS, J. concur