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**IN THE
COURT OF APPEALS OF INDIANA**

MATTHEW TACKETT,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 35A02-0701-CR-114

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffery R. Heffelfinger, Judge
Cause No. 35D01-0509-CM-728

July 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Matthew Tackett appeals the revocation of his probation. He presents the following restated issue for review: Did the trial court abuse its discretion in revoking Tackett's probation?

We affirm.

Tackett was charged on September 20, 2005, with class B misdemeanor public intoxication. Following a bench trial, he was found guilty as charged. On November 14, 2005, the trial court sentenced Tackett to ninety days in jail, which was suspended to probation on house arrest with electronic monitoring. Tackett was also ordered to pay \$156 in court costs by November 29 or to appear in court on that date. Tackett subsequently appeared in court on November 29, and was ordered to pay \$100 toward fines, fees, and court costs by January 31 or to appear in court on that date.

On December 2, 2005, the State filed a Petition Alleging Violation of Electronic Monitoring. As set forth above, Tackett had been ordered by the court to complete ninety days of electronic monitoring. Accordingly, the probation department had instructed him to be "hooked up on electronic monitoring" by November 30, which Tackett failed to do. *Appellant's Appendix* at 17. A warrant was issued for Tackett's arrest. Thereafter, on January 31, Tackett failed to appear for the hearing on unpaid fines, fees, and court costs. The bench warrant for Tackett's arrest was subsequently reissued, and he was arrested on September 13, 2006.

At a hearing on September 25, 2006, the court addressed alleged probation violations in four separate causes. With respect to the instant case, Tackett admitted he

had failed to “get hooked up on electronic monitoring as ordered.”¹ *Transcript* at 49. Tackett, however, claimed that he could not arrange to have the electronic monitoring set up because he had no money and no job as the result of injuries sustained during a fight on Thanksgiving night, November 24, 2005. On September 26, 2006, the court ordered Tackett to serve the balance of his ninety-day sentence in jail.

On appeal, Tackett argues the trial court abused its discretion by revoking probation for his “fail[ure] to pay to be hooked up on electronic monitoring.” *Appellant’s Brief* at 7. In this regard, Tackett directs us to Ind. Code Ann. § 35-38-2-3(f) (West, PREMISE through 2006 2nd Regular Session), which provides as follows: “Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.”

The difficulty with Tackett’s argument is that his probation was not violated for failing to pay for electronic monitoring. *Cf. Baxter v. State*, 774 N.E.2d 1037 (Ind. Ct. App. 2002) (concluding trial court erred in revoking probation for Baxter’s failure to pay in-home detention fees where State failed to offer any evidence that he recklessly, knowingly, or intentionally failed to pay), *trans. denied*. Rather, Tackett violated probation by failing to get hooked up on electronic monitoring as directed. Aside from Tackett’s self-serving intimation, there is no indication in the record that he was required to pay anything prior to the initiation of the electronic monitoring by November 30, 2005.

¹ While the record is not entirely clear, it appears that at least some of the violations in the other cases may have included failure to pay child support and the commission of new criminal offenses.

Moreover, there is no evidence that Tackett made any attempt to initiate monitoring or that he informed the probation department or the court of his alleged inability to pay, despite the fact he was in court on November 29, 2005 (i.e., five days after his alleged debilitating injury and one day before the electronic monitoring deadline). For the next nine or ten months, while a bench warrant was out for his arrest, Tackett proceeded to do nothing with regard to electronic monitoring and failed to show up for a scheduled hearing on January 31, 2006. Under the circumstances, the trial court did not abuse its discretion by revoking Tackett's probation.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.