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**IN THE
COURT OF APPEALS OF INDIANA**

DEVIN CARTER,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A05-0611-CR-642

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G20-0403-FB-47105

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Devin Carter appeals the revocation of his probation.

We affirm.

ISSUE

Whether the trial court denied Carter his right to due process.

FACTS

Pursuant to a plea agreement, Carter pled guilty to burglary, as a class B felony, on July 7, 2004. The trial court sentenced Carter to six years, with four years suspended to probation.

On October 2, 2006, the State filed a notice of probation violation, alleging that Carter had 1) committed the offense of resisting law enforcement; 2) tested positive for marijuana on four separate dates; and 3) failed to pay restitution, fees and court costs. The trial court held an initial probation revocation hearing on October 12, 2006. During the hearing and without representation, Carter admitted that he had been arrested for resisting law enforcement and had tested positive for marijuana four times but asserted that he had been giving his probation officer “[\$]20 to \$30 every two weeks.” (Tr. 7).

The trial court found that Carter had violated the terms of his probation by being arrested and charged with resisting law enforcement and failing four drug tests. The trial court ordered Carter to execute his previously suspended sentence.

Additional facts will be provided as necessary.

DECISION

Carter asserts that he was denied the right to due process when the trial court allegedly failed to advise him of his right to counsel at the probation revocation hearing and failed to determine whether Carter's decision to proceed with the probation revocation hearing without counsel was voluntary, knowing and intelligent. We disagree.

During a probation revocation hearing, a defendant is entitled to certain due process protections, including representation by counsel. Ind. Code § 35-38-2-3(e); *Bell v. State*, 695 N.E.2d 997, 998 (Ind. Ct. App. 1998); *C.B. v. State*, 553 N.E.2d 488, 490 (Ind. Ct. App. 1990).

The law is well-settled that whenever a defendant proceeds without the benefit of counsel, the record must reflect that the right to counsel was voluntarily, knowingly and intelligently waived. Specifically, the trial court must determine the defendant's competency to represent himself and establish a record of the waiver. The record must show that the defendant was made aware of the "nature, extent and importance" of the right to counsel and to the necessary consequences of waiving such a right.

Bell, 695 N.E.2d at 998-99 (internal citations omitted).

Here, the trial court advised Carter as follows:

THE COURT: You have the right to have this matter resolved by admission today, but if you choose to admit the deck would be stacked against you. The reason I say that, Mr. Carter, is once you admit, these prosecutors in tandem are likely to recommend that I revoke your probation and send you to prison for four years. You would then have the opportunity to tell me whatever you think I need to hear, but unless I hear your explanation precisely the way you want me to hear it, there is a chance you'd find yourself going to prison at the end of the hearing. You can also deny these allegations, in which case I will appoint the public defender to represent you. I will set this case for my next available probation calendar [W]hen you come back you would have the benefit of an attorney who'd attempt to negotiate a resolution with the State that would avoid sending you to prison for four years. My question for you this morning, sir,

is whether you think you would benefit from talking to an attorney before any decision is made on these violations?

DEFENDANT: I don't got [sic] no [sic] money to get no [sic] attorney.

THE COURT: That's why I said I would appoint the public defender to represent you.

DEFENDANT: I [sic] been going to the drug classes.

THE COURT: Okay. The issue, Mr. Carter, is whether you want to take the chance and admit that you are in violation of probation on the hopes that I would hear what you had to say exactly the way you want me to hear it.

DEFENDANT: Yes, sir.

THE COURT: . . . Now I don't know what you're going to tell me. . . . [T]here is a risk when you're speaking on your own behalf that you will say something that will be heard differently by the other person, and when that other person has the power to send you to prison for four years, you need to think carefully about what you say, so I'm going to ask you again, Mr. Carter, do you think you would benefit from talking to an attorney before any decision is made on these violations?

DEFENDANT: No.

THE COURT: No, okay. I've done what I can, Mr. Carter.

(Tr. 3-5).

The record shows that the trial court advised Carter that he had the right to counsel. Thus, we find no violation of Carter's right to due process.

Furthermore, the record shows that the trial court adequately explained to Carter the "nature, extent and importance" of his right to counsel as well as "the necessary consequences of waiving such a right." *Bell*, 695 N.E.2d at 999 (quoting *Kirkham v.*

State, 509 N.E.2d 890, 892 (Ind. Ct. App. 1987), *trans. denied*). Accordingly, we find that Carter's waiver of his right to representation was knowing, intelligent and voluntary.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.