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**IN THE  
COURT OF APPEALS OF INDIANA**

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HUGO ALBA,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-0702-CR-83

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APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT  
The Honorable Roderick McGillivray, Judge  
Cause Nos. 03D02-0407-CM-963, 03D02-0410-CM-1369 & 03D02-0507-CM-908

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**September 12, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Alba appeals the Bartholomew Superior Court's decision revoking his probation. Alba argues that the trial court abused its discretion by ordering execution of the remaining portion of his suspended sentence and by failing to enter a written order explaining the reasons why it did so.

We affirm.

### **Facts and Procedural History**

On November 10, 2004, Alba pleaded guilty to one count of illegal consumption and was sentenced to six months suspended to probation. On April 7, 2005, Alba pleaded guilty to one count of possession of marijuana as a Class A misdemeanor and was sentenced to one year suspended to probation. On August 24, 2005, Alba pleaded guilty to another count of possession of marijuana as a Class A misdemeanor and was sentenced to one year of probation and sixty days of home detention. In all three of these cases, it was a condition of Alba's probation that he not possess or use drugs or alcohol and that he participate in treatment programs as deemed necessary by his probation officer or ordered by the trial court.

On April 20, 2006, the State filed petitions to revoke Alba's probation. The alleged probation violations in the petitions were identical:

2. Defendant violated a condition of probation on 3/21/06 by admitting Cocaine and Marijuana use 3 days prior to his [probation] appointment.
3. Defendant violated a condition of probation by testing positive for Cannabinoids on 2/15/06.
4. Defendant violated a condition of probation by admitting Cocaine and Marijuana use on 1/19/06. He was assigned 24 work crew hours in lieu of a Petition to Revoke Probation being filed. He has since been terminated from the work crew program for failing to complete the hours.

5. Defendant violated a condition of probation by failing to complete the recommended treatment.
6. Defendant violated a condition of probation by testing positive for Cocaine and Cannabinoids on 12/14/05.

Appellant's App. pp. 26, 63, 112.

The trial court held a fact-finding hearing on December 18, 2006, at which Alba admitted to all of the allegations except the one alleging failure to complete treatment. The trial court therefore found that Alba had violated the terms of his probation and set the matter for a dispositional hearing to be held on January 22, 2007. At the January 22 hearing, Alba argued for another chance at probation. At the conclusion of the hearing, the trial court stated, "I think you've used up all of your chances Mr. Alba. I'm going to order that you execute the balance of your sentence [and] reduce any outstanding fees to a civil judgment." Tr. p. 88. Alba now appeals.

### **Discussion and Decision**

We review a trial court's decision to revoke probation for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). A defendant is not entitled to probation, but rather such placement is a matter of grace and a conditional liberty which is a favor, not a right. Id. Upon review of the trial court's decision to revoke probation, we will consider only the evidence most favorable to supporting the trial court's judgment without reweighing that evidence or judging 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. Id.

Pursuant to Indiana Code section 35-38-2-3(g) (2004 and Supp. 2007):

If the court finds that the person has violated a condition at any time before termination of the [probationary] period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Here, Alba had already admitted to violating the terms of his probation on January 19, 2006. The State, instead of filing a petition to revoke probation, assigned Alba to participate in a "work crew." Instead of taking advantage of this second chance, Alba failed to complete his work crew hours and again repeatedly used illicit drugs, by his own admission. Given the facts and circumstances before the trial court, we cannot say that the decision to revoke Alba's probation and order execution of the previously suspended sentences was an abuse of discretion.

Alba also claims that the trial court violated his due process rights by not issuing a detailed statement regarding the factors it relied upon in deciding to revoke his probation and order execution of his sentence. Because probation revocation deprives a defendant of only a conditional liberty, he is not entitled to the full due process rights afforded during a criminal proceeding. Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). The minimal due process rights to which a probationer is entitled include: (1) written notice of the claimed violations of probation; (2) disclosure to the probationer of the evidence against him; (3) opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses

(unless the hearing officer specifically finds good cause for not allowing confrontation); (5) a neutral and detached hearing body; and (6) a written statement by the fact-finder as to the evidence relied upon and the reasons for revoking probation. Id. (citing Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). However, when, as here, a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are unnecessary. Id. Still, in making the determination of whether the probation violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violations. Id.

Here, Alba was presented with an opportunity at the dispositional hearing to present evidence that explained and mitigated his violations. He essentially asked for another chance at probation, which the trial court rejected. To the extent that Alba is claiming that the trial court must produce a separate, written statement regarding why it chose to order execution of the sentence, as opposed to continuing probation, Alba directs us to no requirement that the trial court explain why it chose execution of sentence over the other statutory options available. The due process requirements listed in Morrissey refer only to a written statement as to the evidence relied upon and the reasons for revoking probation. See Cox, 850 N.E.2d at 488 (citing Morrissey, 408 U.S. at 489).

Here, the trial court indicated at the dispositional hearing that it was ordering execution of the remainder of Alba's sentences because he had already been given a second chance but had failed to take advantage thereof. Such an oral statement, in the context of a probation revocation hearing, if it contains the facts relied upon and reasons for revocation and is reduced to writing in the transcript of the hearing, is sufficient to

satisfy the requirement of a written statement. Wilson v. State, 708 N.E.2d 32, 33 (Ind. Ct. App. 1999). Therefore, Alba was afforded the procedural due process he was due.

The judgment of the trial court is affirmed.

NAJAM, J., and BRADFORD, J., concur.