

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

LANDOLL SORRELL
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LEWIS JONES,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 48A02-0701-CR-111

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0504-FB-193

October 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Lewis Jones appeals the revocation of his probation.

We affirm.

ISSUES

1. Whether the evidence was sufficient to support the revocation of Jones' probation.
2. Whether the trial court erred in ordering Jones to serve the suspended sentence.

FACTS

On April 29, 2005, the State charged Jones with the following: Count 1, dealing in a schedule III controlled substance, as a class B felony; Count 2, maintaining a common nuisance, as a class D felony; and Count 3, possession of marijuana, as a class A misdemeanor. Jones pled guilty to all counts on August 23, 2006. On September 18, 2006, the trial court sentenced Jones to a ten-year suspended sentence and placed Jones on probation. The terms of Jones' probation required him, among other things, to "not be at a place where illegal drugs are being used or possessed, or where others are engaging in illegal activities"; to "abstain from illicit drug use"; and to "obey all municipal, state and federal laws" (App. 13).

On October 19, 2006, the State filed a notice of violation of probation, alleging that on or about October 12, 2006, Jones committed the following offenses: Count 1, dealing in a schedule III controlled substance, as a class B felony; Count 2, possession of a controlled substance, as a class D felony; Count 3, possession of marijuana, as a class A

misdemeanor; and Count 4, maintaining a common nuisance, as a class D felony. The trial court held a probation revocation hearing on November 6, 2006.

During the hearing, Detective Kevin Early testified that on October 12, 2006, he and other officers with the Anderson Police Department executed a search warrant for Jones' residence, which Jones shared with his girlfriend, Mary Tanner. Detective Early testified that he observed several hydrocodone¹ pills lying on top of a dresser in a bedroom and also found several pill bottles in the dresser's drawers. According to Detective Early, some of the pill bottles were labeled in Jones' name, while others were unlabeled.

Detective Early further testified that during a search of a "room just off the kitchen," (Tr. 24), officers found the following: "three (3) baggies of plant material that field tested positive for marijuana, [and] seven (7) hand rolled cigarette[s] that contain[ed] plant material, that also feel [sic] tested positive for marijuana" (Tr. 24-25); and a pill bottle with a prescription label indicating that it had contained hydrocodone and had been prescribed to "a female person," who did not live at the residence. (Tr. 25).

Detective Early also testified that officers discovered a purse containing "another baggie of plant material that feel [sic] tested for marijuana and several pill bottles that did not have any labels" but contained approximately thirty tablets of hydrocodone and

¹ Hydrocodone is a schedule II controlled substance. Ind. Code § 35-48-2-6(b).

tablets later identified as “Soma[.]”² (Tr. 25). According to Detective Early’s testimony, the purse was hanging inside a closet, which was located in the same room where the other marijuana and pill bottle had been discovered.

Jones also testified during the hearing. Jones testified that he lived in the home searched by police and that he had a prescription for hydrocodone. Jones admitted that he and a friend would “trade” hydrocodone “with one another” when either ran out of their medication. (Tr. 37).

The trial court found that Jones had “committed the new criminal offenses as alleged in probation violation and that he trades drugs with a friend as testified to by [Jones] in open court.” (App. 28). Accordingly, the trial court imposed the previously suspended ten-year sentence.

DECISION

1. Sufficiency of the Evidence

Jones asserts that the evidence was insufficient to support the trial court’s revocation of his probation. We disagree.

Whether to revoke probation is within the trial court’s discretion. *Hubbard v. State*, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997). When reviewing a revocation, we will neither weigh the evidence nor assess witness credibility. *Id.* We will affirm revocation if, considering only the probative evidence and reasonable inferences therefrom, there is

² Soma is a brand name for carisoprodol, which is a “muscle relaxant[.]” See MedlinePlus at <http://www.nlm.nih.gov/medlineplus/druginfo/medmaster/a682578.html#brand-names> (Sept. 6, 2007). Carisoprodol is a schedule IV controlled substance. I.C. § 35-48-2-10(c).

sufficient evidence supporting the conclusion that the probationer is guilty of violating any condition of his probation. Ind. Code § 35-38-2-3; *Hubbard*, 683 N.E.2d at 620.

In this case, Jones admitted that he lived in a residence where police officers discovered marijuana and a controlled substance for which neither resident had a prescription. Also, by admitting to trading hydrocodone when his prescription ran out, Jones admitted to possessing a controlled substance without a valid prescription, which is a class D felony pursuant to Indiana Code section 35-48-4-7.

The State presented sufficient evidence that Jones violated the terms of his probation. Accordingly, we find that the trial court acted within its discretion when it revoked Jones's probation.

2. Sentence

Jones asserts that the imposition of the originally suspended ten-year sentence is inappropriate given the nature of his violations as well as his age—sixty-four years—and declining health. Indiana Code section 35-38-2-3(g) provides as follows:

If the court finds that the person has violated a condition at any time before termination of the 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.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Podlusk v. State*, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005).

“[A] defendant may not collaterally challenge his sentence on an appeal from his probation revocation. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005) (citing *Stephens v. State*, 818 N.E.2d 936, 939 (Ind. 2004)), *trans. denied*. Furthermore, “the standard of review used when reviewing whether a defendant’s probation revocation sentence is unreasonable is an abuse of discretion.” *Id.* at 957 (emphasis added).

In this case, the evidence shows that Jones was placed on probation after pleading guilty to dealing in a controlled substance, maintaining a common nuisance, and possessing marijuana. The evidence further shows that Jones violated his probation by living in a place where illegal drugs were used or possessed and by possessing and using a controlled substance—hydrocodone—without a prescription, in violation of state law. Thus, we find no abuse of discretion in ordering Jones to serve his suspended sentence.

Affirmed.

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