



## **Case Summary**

Jeremy Franklin appeals the revocation of his probation. We affirm.

### **Issue**

The dispositive issue is whether the evidence was sufficient to sustain the finding that Franklin violated his probation.

### **Facts and Procedural History**

On December 3, 2001, Franklin pleaded guilty to burglary and theft. On January 28, 2002, he was sentenced to ten years' imprisonment, with six years executed and four years suspended. On September 23, 2002, the trial court granted Franklin's petition for modification of sentence and placed him on probation for the remainder of his sentence. On December 3, 2003, the State filed a notice of probation violation against Franklin, alleging that he had tested positive for marijuana. Franklin failed to appear for his January 21, 2004, hearing, and an arrest warrant was issued. On November 1, 2006, the State filed an amended notice of probation violation alleging not only that Franklin had tested positive for marijuana, but also that he had committed armed robbery, failed to keep the probation department informed of his address, failed to timely report to the probation department, failed to secure a permit for out-of-state travel, failed to obtain a G.E.D., failed to obtain a substance abuse evaluation, and failed to pay probation user fees and court costs. At the probation revocation hearing on January 3, 2007, the trial court found that Franklin had violated his probation on each of the aforementioned grounds. The court revoked his probation and ordered him to serve his previously suspended sentence. Franklin appeals.

## Discussion and Decision

Franklin raises two issues on appeal. First, he asserts that the trial court erred in admitting evidence regarding his drug test results. Secondly, he asserts that the evidence is insufficient to support probation revocation. We find the sufficiency issue dispositive.

Probation is an alternative to commitment in the Department of Correction, and it is at the sole discretion of the trial court. A defendant is not entitled to serve a sentence in probation. Rather, probation is a “matter of grace” and a “conditional liberty that is a favor, not a right.” A revocation hearing is in the nature of a civil proceeding, so the alleged violation need be proven only by a preponderance of the evidence. If there is substantial evidence of probative value to support the trial court’s decision that the probationer is guilty of any violation, revocation of probation is appropriate.

*Lightcap v. State*, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007) (citations omitted). As with other sufficiency questions, we neither reweigh the evidence nor judge witness credibility when reviewing a probation revocation. *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*. The trial court’s order to revoke probation does not depend upon a showing of multiple violations; rather, violation of a single condition is sufficient. *M.J.H. v. State*, 783 N.E.2d 376, 377 (Ind. Ct. App. 2003), *trans. denied*.<sup>1</sup>

The positive drug test was one of many violations enumerated in both the State’s amended notice of probation violation and the court’s revocation order. The State presented testimony from three witnesses identifying Franklin as the perpetrator of an armed robbery. In addition, Franklin’s probation officer testified regarding Franklin’s failure to report, failure to keep the probation department apprised of address changes, and failure to obtain a

travel permit. Because substantial evidence of probative value exists to support several other grounds for revoking Franklin's probation, we need not address the admissibility of the drug test results. With regard to his sufficiency claim, Franklin is merely asking us to reweigh evidence and assess witness credibility, neither of which we will do.

Affirmed.

DARDEN, J., and MAY, J., concur.

---

<sup>1</sup> Indiana Code Section 35-38-2-3(g)(3) states: "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 order execution of all or part of the sentence that was suspended at the time of the initial sentencing."