

Case Summary

Christopher Mendez appeals the trial court's revocation of his probation. We affirm.

Issue

The sole issue is whether there is sufficient evidence that Mendez violated a condition of his probation.

Facts

On May 25, 2007, Mendez pled guilty to one count of Class B felony sexual misconduct with a minor for having intercourse with and impregnating fifteen-year-old S.N. On July 6, 2007, the trial court sentenced Mendez to six years, with all but 180 days suspended to formal probation. Two of the conditions of probation to which Mendez agreed were that he would keep the probation department informed of all changes of address, and that he would provide truthful and accurate information to his probation officer, Thomas Fox.

On November 2, 2007, Fox met with Mendez prior to a status hearing with the trial court. During that meeting Mendez told Fox that he was unemployed. However, during the status hearing Mendez told the trial court that he was employed. After the hearing, Fox confronted Mendez about what he had told the trial court; Mendez said that he was unemployed but had an upcoming job interview.

A few days later Fox filed a notice of probation violation against Mendez for these inconsistent statements, at least one of which must have been untruthful. The notice of probation violation was mailed to the home of Mendez' grandparents, where he had told Fox he was residing. The notice was returned as undeliverable because of an insufficient address. Fox then phoned the contact number Mendez had provided. He spoke to Mendez' grandmother, who told Fox she had not seen Mendez for "some time." Tr. p. 27. After this phone conversation, Fox filed a second probation violation notice based on Mendez not being truthful or accurate regarding his address. Two notices mailed to his grandparents's address were, again, returned as undeliverable due to insufficient address.

At some point, Mendez' ex-girlfriend Constance Edwards phoned the Adams County Prosecutor's Office to say that she believed Mendez was together again with S.N. and that S.N. was pregnant again with his child. Edwards had three children with Mendez, and she brought the children for visitation with Mendez to S.N.'s residence. Edwards also saw Mendez' clothes at the residence. Following this call, an investigator for the prosecutor's office, William Crone, staked out both S.N.'s residence and Mendez' grandparents's residence for several days in February 2008. During this time, Crone never saw Mendez nor his vehicle at the grandparents's residence. However, on one day Crone saw a man he later identified as Mendez leave S.N.'s residence early in the

morning, get into a snow-covered vehicle that was registered in the name of S.N.'s father, and drive to Mendez' place of employment.¹

On September 5, 2008, the trial court held a hearing. After hearing testimony from Edwards, Crone, Fox, and Mendez, the trial court found that Edwards, Crone, and Fox were credible but Mendez was not. It revoked Mendez' probation on the basis that he had not been truthful and accurate with Fox. Mendez now appeals.

Analysis

The decision to revoke probation is within the sole discretion of the trial court and we review such a decision for an abuse of that discretion. Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008). We consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses. Id. If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. at 639-40. An alleged violation of probation only has to be proven by a preponderance of the evidence, not beyond a reasonable doubt. Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006).

We note that the trial court's written order revoking Mendez' probation only states that he was untruthful with Fox, his probation officer. It does not explicitly reference whether Mendez failed to provide an accurate address to the probation department. However, at the conclusion of the revocation hearing the trial court clearly indicated that

¹ Mendez found employment sometime after the November 2, 2007 hearing.

it did not believe Mendez' claim that he indeed was living with his grandparents but that he was spending time instead at S.N.'s residence, although it was uncertain whether that was Mendez' permanent residence. Although due process requires a written statement by the fact finder regarding the evidence relied upon and the reasons for revoking probation, this requirement may be satisfied by a transcript containing a clear statement of the trial court's reasons for revoking probation. See Hubbard v. State, 683 N.E.2d 618, 620-21 (Ind. Ct. App. 1997). We believe it is clear the trial court found that Mendez was untruthful to Fox not only on November 2, 2007, with respect to his employment status, but also with respect to his residence.

Mendez essentially is requesting that we reweigh evidence and judge witness credibility. He attacks Edwards' motives in testifying against him at the revocation hearing. Additionally, he directs us to his proffered explanation for why he gave three different versions of whether he was employed to Fox and the trial court on November 2, 2007. The trial court clearly was in the appropriate position to consider reasons for believing or not believing Edwards, and it believed her rather than Mendez. We will not second guess that determination. The trial court also was entitled to reject Mendez' explanation for what he said on November 2, 2007.

He also questions whether his grandmother's statement to Fox that she had not seen Mendez for "some time" should be taken to mean he did not live there. Tr. p. 27. Mendez also asserts that the return of the notices of probation violation was not for an inaccurate address, but for an incomplete address. This evidence, however, must be

considered in conjunction with Edwards' and Crone's testimony indicating that Mendez did not live with his grandparents. All of this evidence together supports the conclusion that he did not and, thus, was untruthful to Fox regarding his residence.

Conclusion

There is sufficient evidence to support the trial court's conclusion that Mendez violated his probation by not providing truthful and accurate information to his probation officer. We affirm the revocation of probation.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.