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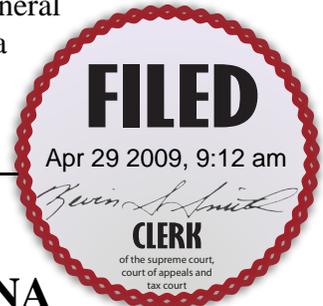
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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID RUTHERFORD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0810-CR-970

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather A. Welch, Judge
The Honorable Louis Rosenberg, Magistrate
Cause No. 49F09-0709-FD-178979

April 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

David Rutherford appeals the trial court's order revoking his probation. We affirm.

On September 5, 2007, the State charged Rutherford with class D felony theft and class A misdemeanor driving while suspended with a prior conviction. On October 9, 2007, Rutherford entered into a plea agreement with the State. He pled guilty to theft, and the State dismissed the driving while suspended charge. He agreed to serve 365 days, with 361 days suspended to probation, and he agreed to perform forty hours of community service. He also acknowledged that he would be subject to all standard conditions of probation, including random urinalysis. Appellant's App. at 32. The trial court accepted Rutherford's guilty plea and imposed the agreed-upon sentence.

Four days after being sentenced, on October 13, 2007, Rutherford was arrested and charged with operating a vehicle while intoxicated, driving while suspended, operating a vehicle with blood alcohol content of .08, and public intoxication. On October 26, 2007, Rutherford's probation officer filed a notice of probation violation, citing the October 13, 2007, arrest. Over the course of the next two months, Rutherford's probation officer filed several amended notices, alleging additional violations such as submitting a diluted urine sample, failing to submit urine samples, failing to report to the probation office, failing to pay probation fees, and incurring another arrest on August 20, 2008, for alleged criminal mischief. *Id.* at 38-54. The trial court held six probation violation hearings in this case. On October 3, 2008, the trial court found Rutherford to be in violation of his probation terms. The court revoked his probation and ordered him to serve 270 days of his previously suspended sentence. Rutherford now appeals.

Rutherford claims that the trial court erred by revoking his probation, and alternatively that it should have ordered him to serve less time. Our standard of review is well settled.

The decision to revoke probation is within the sole discretion of the trial court. And its decision is reviewed on appeal for abuse of that discretion. On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses. If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation.

Wood v. State, 892 N.E.2d 637, 639 (Ind. 2008) (citations omitted). We also note that probation is “a favor granted by the State, not a right to which a criminal defendant is entitled.” *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. Violation of a single condition of probation is sufficient to support a probation revocation. *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). When a court determines that a probationer has violated a condition of probation, it may impose one or more of the following sanctions: (1) continue probation, with or without modifying or enlarging the conditions; (2) extend the probationary period for not more than one year beyond the original probationary period; and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g).

At the October 3, 2008, probation hearing, Rutherford admitted to the trial court that he had committed several probation violations, including being arrested on October 13, 2007, and on August 20, 2008, submitting a diluted urine sample, failing to report to his probation officer, failing to submit urine samples, and failing to complete his community service. Rutherford's admissions are sufficient to establish that he violated the terms of his

probation.¹ *See Parker v. State*, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997) (holding that evidence was sufficient to support probation revocation where defendant, through his attorney, admitted to violating probation terms).

Rutherford argues that the trial court should not have ordered him to serve 270 days of his suspended sentence “in light of his family responsibilities and remorse[.]” Appellant’s Br. at 4. At the hearing, Rutherford told the trial court that he incurred many of the probation violations because he had traveled to Ohio to visit his ailing father, after being “unjust[ly]” denied permission to do so by his probation officer. Tr. at 41. He also stated that it would not be “fair” for the trial court to revoke his probation because he has a fifteen-year-old son. *Id.* Clearly, Rutherford is asking us to reweigh the evidence and judge his credibility, which we simply cannot do.

In sum, there is substantial evidence of probative value to support the trial court’s decision to revoke Rutherford’s probation. Moreover, the trial court was authorized by statute to order Rutherford to serve all or part of his suspended sentence as a sanction for his admitted probation violations. There was no abuse of discretion, and thus, we affirm the trial court’s order.

Affirmed.

BRADFORD, J., and BROWN, J., concur.

¹ In his appeal, Rutherford does not challenge the sufficiency of the evidence.