

Case Summary

Peter Frericks appeals the trial court's revocation of his probation. We dismiss the appeal.

Issue

Frericks raises two issues in his brief. We sua sponte find there to be one dispositive issue: whether Frericks may challenge the factual basis supporting the revocation of his probation on direct appeal.

Facts

On August 25, 2009, Frericks pled guilty in Kosciusko County to one count of Class A misdemeanor driving while suspended. The trial court imposed a sentence of 365 days incarceration, all suspended, and placed Frericks on probation for 365 days. At the time of this conviction, Frericks was already on probation in Allen County following a March 9, 2009 conviction for operating while intoxicated and an habitual substance offender sentence enhancement.

On March 8, 2010, the Kosciusko County Probation Department filed a petition alleging that Frericks had violated his probation for his Kosciusko County conviction by failing to report to the Allen County Probation Department, and also that he had missed an appointment at the Kosciusko County Probation Department. The trial court held an initial hearing on the petition on July 8, 2010. At that time, Frericks was fully advised of his rights in a probation revocation proceeding and his right to counsel. Frericks waived his right to counsel and indicated that he wished to admit to violating probation. After

further advising Frericks of the rights he would give up if he admitted to violating probation and assuring that Frericks was not under the influence of any intoxicants and was not coerced in any way, the trial court accepted Frericks's admission to violating probation. The trial court then proceeded to ask Frericks some questions regarding his missing of appointments with both the Allen County and Kosciusko County Probation Departments and concluded, "The Court would find a sufficient factual basis for accepting the Defendant's admission and would find that he did violate the terms and conditions of his probation by missing three meetings with the Allen County . . . Probation Department." Tr. p. 20.

On August 2, 2010, the trial court revoked Frericks probation and ordered him to serve the entirety of the previously-suspended 365-day sentence. Frericks now appeals.

Analysis

Frericks's two arguments in this direct appeal can be summarized as follows: there was an insufficient factual basis to support his admission to violating probation in Kosciusko County due to a lack of evidence that failing to report to probation in Allen County would constitute a violation of his probation in Kosciusko County. We conclude, however, that this direct appeal is an inappropriate vehicle for making such an argument. Specifically, the sole avenue for a defendant who has admitted or pled guilty to a probation violation to challenge a revocation of probation is through a post-conviction relief petition. Huffman v. State, 822 N.E.2d 656, 660 (Ind. Ct. App. 2005).

Additionally, Indiana Post–Conviction Rule 1(1)(a)(5) allows a defendant to allege that his or her probation was “unlawfully revoked.”

Huffman was based upon Tumulty v. State, 666 N.E.2d 394 (Ind. 1996), which established that the validity of guilty pleas resulting in convictions could only be challenged in post-conviction relief proceedings. Huffman expanded that rule to apply to probation revocations as well. The specific issue the defendant had raised in Tumulty was the sufficiency of the factual basis supporting his guilty plea, which is precisely the issue Frericks raises. Thus, based on Huffman and Tumulty, Frericks must challenge the revocation of his probation through a post-conviction relief proceeding, if at all. Frericks appeal must be dismissed, without prejudice to his right to challenge his probation revocation in a post-conviction relief proceeding if he so chooses. See Huffman, 822 N.E.2d at 660.¹

Conclusion

We dismiss Frericks’s appeal.

Dismissed.

RILEY, J., and DARDEN, J., concur.

¹ We also note that, although the State has not argued that this appeal should be dismissed, we raised this issue sua sponte in Huffman and believe it is appropriate to do so here, as well.