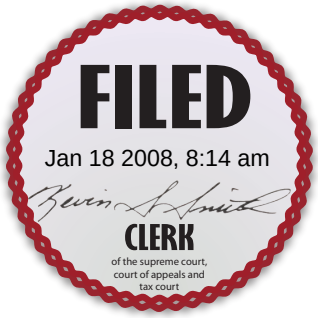

ATTORNEY FOR APPELLANT:

DOUGLAS R. LONG
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TONY RAY TRENT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0707-CR-645
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis Carroll, Judge
Cause No. 48D01-0409-FC-313

January 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tony Ray Trent appeals the trial court's revocation of his probation. Trent raises three issues for our review, which we restate as the following issue: whether the trial court abused its discretion in revoking Trent's probation and imposing a portion of his suspended sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 14, 2004, the State charged Trent with Operation of a Motor Vehicle After Forfeiture of License for Life, a Class C felony. Trent pleaded guilty to the charge. On March 28, 2005, the court sentenced Trent to five years, with two years executed and three years suspended to probation.

On May 18, 2007, at about 1:30 a.m., Elwood City Police Officers responded to a call by D.T., Trent's ten-year-old son. D.T. told the dispatcher that "his mom and dad were fighting." Transcript at 6. Officers Andy McGuire and Matt Jarrett were dispatched to the scene, where they spoke with Trent and Laurie Clingerman. Officer McGuire noted that Clingerman was "kind of out of breath, like she had been in some kind of physical something." Id. at 9. Clingerman also had "a red spot" on her shirt. Id.

Shortly thereafter, Officer McGuire spoke with D.T. D.T. told Officer McGuire that he saw Trent "choke slam[]" Clingerman while Clingerman was trying to make a phone call. Id. at 17. When D.T. saw Trent attack Clingerman, D.T. ran barefoot across the street to a neighbor's house, where D.T. called the police. Officer McGuire noted that D.T. was "[v]ery shaken up [and] out of breath." Id. After Officer McGuire spoke

with D.T., Clingerman showed Officer McGuire the home phone, the back of which had been ripped off with the batteries hanging out of it.

On May 22, the State filed a notice of violation of probation, alleging that Trent had committed domestic battery, as a Class D felony, and resisting law enforcement, as a Class A misdemeanor. The court held an evidentiary hearing on June 19, at which, and over Trent's objection, Officer McGuire testified to what he had been told by D.T.[1] After the hearing the court found that Trent had committed battery in violation of his probation. The court then ordered Trent to serve two years of his three-year suspended sentence. This appeal ensued.

DISCUSSION AND DECISION

Trent contends that the trial court abused its discretion when it revoked his probation and ordered him to serve two years of his three-year suspended sentence. Specifically, Trent makes the following arguments: (1) the trial court erroneously admitted hearsay evidence that was not substantially trustworthy; (2) the admission of that evidence violated his confrontation rights;[2] and (3) the imposition of two years of his three-year suspended sentence was unreasonable "[i]n consideration of the nature of the offense and the character of the offender." Appellant's Brief at 15. We address each argument in turn.

We review a trial court's decision to revoke probation under an abuse of discretion standard. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied. A

[1] The State subpoenaed Clingerman and D.T. to testify at the hearing, but they failed to appear.

[2] Trent also argues that, once the hearsay evidence is excluded, the remaining evidence is insufficient to support the revocation of his probation. However, we need not reach that issue since we conclude that the hearsay evidence was properly admitted.

probation revocation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Jones, 838 N.E.2d at 1148.

The Due Process Clause applies to probation revocation hearings. Reyes v. State, 868 N.E.2d 438, 440 (Ind. 2007). But there is no right to probation: the trial court has discretion whether to grant it, under what conditions, and whether to revoke it if conditions are violated. Id. "It should not surprise, then, that probationers do not receive the same constitutional rights that defendants receive at trial." Id. However, "[t]his does not mean that hearsay evidence may be admitted willy-nilly in a probation revocation hearing." Id. at 440.[3]

Our Supreme Court, in Reyes, held that the "substantial trustworthiness test" applies in determining the admissibility of hearsay evidence in probation revocation

[3] We remind Trent's counsel to follow the Bluebook rules for citation. See Ind. Appellate Rule 22. Specifically, in the future counsel should avoid five-page, near-verbatim excerpts from our Supreme Court without proper attribution. See, e.g., Keeney v. State, 873 N.E.2d 187, 189-90 (Ind. Ct. App. 2007).

hearings. Id. at 439. Quoting the United States Court of Appeals for the Seventh Circuit, the court noted that

> ideally [the trial court should explain] on the record why the hearsay [is] reliable and why that reliability [is] substantial enough to supply good cause for not producing . . . live witnesses. If the test of substantial trustworthiness of hearsay evidence is met, a finding of good cause has also implicitly been made.

Id. at 442 (quoting United States v. Kelley, 446 F.3d 688, 693 (7th Cir. 2006)) (alterations in original).

Here, Trent's first argument is simply a bald assertion that the hearsay evidence lacked substantial trustworthiness because "[t]here is insufficient evidence to suggest that this was an excited utterance." Appellant's Brief at 20. Trent's argument is without citation to authority and is therefore waived. See Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, the trial court stated the following in finding the hearsay substantially trustworthy:[4]

> [W]e've relied heavily on hearsay. We're, of course, allowed to do that if [the] hearsay is credible. And it's . . . credible if it's from a trained and neutral observer. [And] there's additional evidence that kind of co[rr]oberates the hearsay. All those sort of things that help us know whether we should trust the hearsay or not. And of course we're allowed to use our common sense. We have a nine (9) year old kid who is running out of the house at one . . . or two o'clock . . . in the morning all excited, saying to the Police that dad choke slammed the mom. . . . Is that statement credible[?] Is it supported by some other evidence so that it's . . . believable[?] I think it probably is. First of all, it just doesn't make any sense that a kid is running out of the house in the middle of the night without some reason. Also there are Police Officers there who make some

[4] We note that the trial court made its statements as to the hearsay's reliability without the benefit of Reyes, which was decided two days after the trial court revoked Trent's probation. As such, the trial court here, as with the trial court in Reyes, did not use the phrase "substantially trustworthy" when discussing the hearsay evidence, referring instead to the hearsay's "reliability" or "credibility." See Reyes, 868 N.E.2d at 442 n.2.

> observations that are helpful. Small blood spots [were] mentioned. A telephone that's damaged. Consistent with what's . . . been told. I don't know whether or not this is an all out physical altercation or [if] it was . . . an argument that got out of . . . hand and a little bit physical. But[,] at the very least, there was some battery here. There was some touching. You don't get blood on your shirt from having a nice calm conversation . . . about who gets to use the telephone next. So when you have a telephone destroyed and blood on the shirt and a child running next door to call the Police saying daddy has choke slammed mom, I think it's more probabl[e] than not, Mr. Trent, from anybody who is a fair and objective observer[,] that a battery took place.

Transcript at 50-51. Clearly, the trial court relied on more than just D.T.'s state of mind at the time he spoke with Officer McGuire in finding the hearsay substantially trustworthy. Trent does not challenge the fact that there was blood at the scene, that the telephone was destroyed, or that D.T. had run barefoot to a neighbor's house to call the police in the early hours of the morning. That evidence adequately supports the court's finding that the hearsay testimony was substantially trustworthy.

Second, Trent argues that the admission of the hearsay evidence denied him his Sixth Amendment right to confrontation. But Trent ignores our Supreme Court's clear language that that right is not applicable to revocation proceedings. As the court stated: "Because probation revocation hearings are not criminal trials, the United States Supreme Court's decision on the Sixth Amendment right to confrontation in criminal trials . . . is not implicated." Reyes, 868 N.E.2d at 440 n.1. As such, we do not consider that argument. See id.

Third, Trent maintains that the trial court abused its discretion when it imposed two years of his three-year suspended sentence. Specifically, Trent argues that the court's order was unreasonable "[i]n consideration of the nature of the offense and the

character of the offender."[5] Appellant's Brief at 15. "[T]he standard of review used when reviewing whether a defendant's probation revocation sentence is unreasonable is an abuse of discretion [standard]." Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied.

The facts here demonstrate that the trial court had ample basis for its decision to order Trent to serve a portion of his suspended sentence. Trent battered the mother of his child in front of that child. And it is undisputed that his doing so violated a condition of his probation. As such, the trial court did not abuse its discretion in ordering Trent to serve a portion of his suspended sentence.

Affirmed.

BAILEY, J., and CRONE, J., concur.

[5] Insofar as Trent's argument might be interpreted as an attempt to collaterally attack his original sentence, Trent is prohibited from attempting such an attack following the revocation of his probation. See Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied.