

SUPREME COURT OF INDIANA

Vicory v. State

802 N.E.2d 426 (Ind. 2004) · No. 49S05-0304-CR-00153 · Decided January 29, 2004

SUMMARY

The Indiana Supreme Court held that a defendant's right of allocution applies to probation revocation hearings when the defendant specifically requests an opportunity to make a statement. Although the trial court should have granted Chad Vicory's request to read a statement, the court affirmed because Vicory had testified at the hearing and did not identify any additional argument he would have made.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Shepard, Chief Justice; Dickson, Justice; Boehm, Justice; Rucker, Justice; Sullivan, Justice
JURISDICTION	Indiana
DECIDED	January 29, 2004
DOCKET	49S05-0304-CR-00153
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition to transfer from the Indiana Court of Appeals following affirmance of the trial court's revocation of probation and execution of a previously suspended sentence.
STANDARD OF REVIEW	The court reviewed the legal question concerning the right of allocution de novo and applied Indiana Trial Rule 61's harmless-error standard to the asserted denial of allocution.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Indiana; binding precedent in Indiana.
PARTIES	Chad E. Vicory v. State of Indiana

TOPICS

- probation
- criminal procedure
- sentencing
- due process
- fourteenth amendment

PRACTICE AREAS

- criminal procedure
- probation
- sentencing
- constitutional law

QUESTIONS PRESENTED

1. Whether a defendant has a right of allocution at a probation revocation hearing.
2. Whether the trial court's refusal to permit Vicory to read a requested statement required reversal when he had already testified and did not identify what additional statement he would have made.
3. Whether Vicory waived the allocution claim by failing to object contemporaneously.

HOLDINGS

1. The right of allocution applies to probation revocation hearings when the defendant specifically requests an opportunity to make a statement.
2. The trial court was not required under Indiana Code section 35-38-1-5 to ask Vicory whether he wished to make a statement because a probation revocation hearing does not involve pronouncing a new sentence.
3. The denial did not require reversal because Vicory testified at the hearing, thereby substantially accomplishing the purpose of allocution, and he did not identify any additional statement or argument he would have made.
4. Vicory did not waive the claim because his specific request to read a statement and the trial court's denial of that request preserved the issue for appeal.

KEY QUOTATIONS

"We hold that it should." (428)

"But when the situation presents itself in which the defendant specifically requests the court to make a statement, as it did here, the request should be granted." (429)

"Thus, we conclude that the right of allocution should apply to probation revocation hearings." (430)

FACTUAL BACKGROUND

Vicory was convicted of sexual misconduct with a minor and received a six-year sentence, with four years suspended and two years executed. As a condition of probation, he was required to participate in a halfway-house program, maintain full-time employment, and submit to urinalysis. After his halfway-house placement ended and he failed to establish enrollment elsewhere, lost his employment, and missed a drug test, the State sought revocation; at the revocation hearing, Vicory testified but was denied permission to read an additional statement.

PROCEDURAL HISTORY

Vicory was convicted in Marion Superior Court and sentenced to six years, with four years suspended, followed by probation. After the State petitioned to revoke probation based on alleged violations, the trial court found a violation, revoked probation, and ordered the previously suspended sentence executed. The Indiana Court of Appeals affirmed, and the Indiana Supreme Court granted transfer to decide whether a defendant has a right of allocution at a probation revocation hearing.

DISPOSITION

affirmed

CASES CITED

- Vicory v. State, 781 N.E.2d 766, 769 (Ind. Ct. App. 2003)
- Robles v. State, 705 N.E.2d 183, 187 (Ind. Ct. App. 1998)
- Ross v. State, 676 N.E.2d 339, 343 (Ind. 1996)
- Mingle v. State, 182 Ind. App. 653, 396 N.E.2d 399, 405 (1979)
- Sanchez v. State, 749 N.E.2d 509, 520 (Ind. 2001)
- Campbell v. State, 622 N.E.2d 495, 498 (Ind. 1993)
- United States v. Barnes, 948 F.2d 325, 331 (7th Cir. 1991)
- Minton v. State, 400 N.E.2d 1177, 1178, 1180 (Ind. Ct. App. 1980)
- Applewhite v. United States, 614 A.2d 888 (D.C. 1992)
- State v. Carlsen, 93 Hawai'i 332, 3 P.3d 50 (2000)
- State v. Germaine, 152 Vt. 106, 564 A.2d 604 (1989)
- Richardson v. State, 717 N.E.2d 32, 49 n.36 (Ind. 1999)