

Appellate Case No.: **19A-CR-02245**

Joshua Allen Wilson,)	Appeal from the Grant
Appellant)	Superior Court 2
vs.)	
State of Indiana,)	Trial Court Cause No.
Appellee)	27D02-1807-F6-408

Pages 1 through 18

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**IN THE
INDIANA COURT OF APPEALS**

Appellate Case No. : **19A-CR-02245**

FACT FINDING HEARING

August 26, 2019

Danielle N. Baldwin
Official Court Reporter
Grant Superior Court 2

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A P P E A R A N C E S

FOR THE STATE: SCOTT J. HUNT, Deputy Prosecuting Atty.
101 East Fourth Street
Marion, Indiana 46952

FOR THE DEFENDANT: KATRINA LYNN
102 S. Wabash Street
Wabash, Indiana 46992

STATE'S WITNESS - JOSHUA GARCIA (DIRECT)

1 [Proceedings commence at 10:38 a.m. on August 26, 2019]

2

3 THE COURT: Joshua Wilson. Cause number 27Do2-1807-F6-408. Mr. Wilson's
4 present today in custody of the Grant County Sheriff along with Counsel Ms.
5 Lynn. State of Indiana's present by Deputy Prosecutor Marks and Probation by
6 Officer Garcia. And we're set for a fact finding today. Are we proceeding with that
7 fact finding?

8 MS. LYNN: Yes Judge.

9 THE COURT: Okay. State ready to present evidence?

10 THE STATE: Yes. The State calls Joshua Garcia to the stand, Your Honor.

11 THE COURT: Okay. Please raise your right hand. Do you solemnly swear that the
12 testimony you're about to provide will be the truth, the whole truth, and nothing
13 but the truth, so help you God?

14 MR. GARCIA: Yes.

15 COURT: Okay. And I'll have you adjust the microphone there.

16 THE STATE: Please state your name for the record.

17 MR. GARCIA: Joshua Garcia.

18 THE STATE: How do you spell your last name?

19 MR. GARCIA: G-A-R-C-I-A.

20 THE STATE: And what is your current position?

21 MR. GARCIA: I'm an Adult Probation Officer with Grant County.

22 THE STATE: And how do you know the Defendant?

23 MR. GARCIA: He was my client.

24 THE STATE: And how long has he been your client?

25 MR. GARCIA: Um, I would want to say roughly, two years.

STATE'S WITNESS - JOSHUA GARCIA (CROSS)

1 THE STATE: Do you've been the only probation officer he's seen in regard to the
2 cause number 27Do2-1807-F6-408?

3 MR. GARCIA: Yes in regards to this cause.

4 THE STATE: And were you the probation officer that filed the probation
5 violation?

6 MR. GARCIA: Yes.

7 THE STATE: And you indicated that he had been given, um, a time to be at
8 probation. Is that correct?

9 MR. GARCIA: That's correct.

10 THE STATE: And would you please describe, um, what happens, um, after he was
11 given a time to come back.

12 MR. GARCIA: Um, he was—he last reported on March 26th and I provided an
13 appointment for him to report on again on April 10th, 2019, um, he failed to
14 report on this date. I sent a failure to report letter to the ad—to the address that he
15 last provided and requested that he report in on April 24th. Um, he failed to report
16 on that date, um, I sent an additional letter, um, requesting that he report on May
17 8th of 2019 and he failed to do so, um, then as well.

18 THE STATE: And since that time, has he reported to probation at all?

19 MR. GARCIA: No.

20 THE STATE: Nothing further, Your Honor.

21 THE COURT: Ms. Lynn?

22 MS. LYNN: Do you recall what address you sent those letters to?

23 MR. GARCIA: It'd be 2801 South Stone Road, Lot 151.

24 MS. LYNN: Did Mr. Wilson ever contact you via phone after receiving any of
25 those letters?

STATE'S WITNESS - JOSHUA GARCIA (RE-DIRECT)

1 MR. GARCIA: According to my notes, I don't believe so?

2 MS. LYNN: And so, if I heard you right, Mr. Wilson failed to appear for an
3 appointment on March 26th of this year?

4 MR. GARCIA: Correct.

5 MS. LYNN: And then you sent—and then you rescheduled for April 10th?

6 MR. GARCIA: He last reported on March 26th and then was scheduled again for
7 April 10th. And failed to report on that date.

8 MS. LYNN: And then you sent out two letters after that you told him date? Is that
9 correct?

10 MR. GARCIA: Yes I sent additional letters requesting for him to report on the 24th
11 of April and also on May 8th, 2019.

12 MS. LYNN: I have no additional questions.

13 THE COURT: Mr. Marks, any additional questions?

14 THE STATE: And you stated that you had sent two letters out? Uh, that was to
15 have him come back in for another meeting with your, correct?

16 MR. GARCIA: That is correct.

17 THE STATE: And do you normally send those letters to everybody?

18 MR. GARCIA: Yes for clients that do not report to their scheduled appointment, I
19 send out a failure to report to give them the opportunity to check in with me
20 again.

21 THE STATE: So if people report as they're supposed to, you don't send those
22 letters?

23 MR. GARCIA: Correct.

24 THE STATE: And you sent it to the address that he had given to you, correct?

25 MR. GARCIA: Yes. The last reported address was where I sent those to.

STATE'S WITNESS - JOSHUA WILSON (DIRECT)

1 THE STATE: And you were asked this, but I wanted to clarify, are you aware of
2 Mr. Wilson contacting probation at all after that March 26th date?

3 MR. GARCIA: Don't recall him re-calling after that date.

4 THE STATE: Thank you. Nothing further, Your Honor.

5 THE COURT: Ms. Lynn, any other questions?

6 MS. LYNN: No additional questions.

7 THE COURT: Okay. Thank you. You can step down.

8 THE STATE: Uh, the State would ask Mr. Wilson some questions.

9 THE COURT: Okay. Please raise your right hand sir. Do you solemnly swear that
10 the testimony you're about to provide will be the truth, the whole truth, and
11 nothing but the truth so help you God?

12 DEFENDANT: Yes Ma'am.

13 THE STATE: Were you told by probation officers to state your intake for the
14 BASS Class?

15 DEFENDANT: Yes.

16 THE STATE: Did you ever state intake for BASS Class?

17 DEFENDANT: I went to, uh, I went to the offices and they told me that-to not
18 start 'til I could provide. Until I had steady income where I could pay for the
19 classes on-on a regular basis.

20 THE STATE: Which office did you go to?

21 DEFENDANT: The Family Services Office.

22 THE STATE: And did you notify probation of what they had told you?

23 DEFENDANT: Yes Sir.

24 THE STATE: And what day did you notify them of that?

25 DEFENDANT: Um, I'm not sure exactly what the date was?

1 THE STATE: Was it on or before March 26th?
2 DEFENDANT: It possibly could of been.
3 THE STATE: Was it after March 26th?
4 DEFENDANT: I'm not sure? He was aware—he was aware of the situation though.
5 THE STATE: Did you report to probation at any time after March 26th?
6 DEFENDANT: N—No, but I received, uh, the first letter I received, um, as soon as
7 I opened the letter, I called him to let him know that I received a letter from him,
8 explain—explaining my situation.
9 THE STATE: And the letter gave you a date to go to probation?
10 DEFENDANT: Yes Sir.
11 THE STATE: And did you go on that date?
12 DEFENDANT: No Sir.
13 THE STATE: Nothing further, Your Honor.
14 THE COURT: Ms. Lynn?
15 MS. LYNN: No questions at this time.
16 THE COURT: Okay. Any other evidence?
17 THE STATE: No, Your Honor. The State rests at this time.
18 THE COURT: Ms. Lynn, any further evidence?
19 MS. LYNN: No, Judge.
20 THE COURT: Argument Mr. Marks?
21 THE STATE: Your Honor, um, it's been established that he was on probation
22 under the cause number that he was—he did an intake with, uh, Probation Officer
23 Joshua Garcia. That he was given dates to return, um, by his own account Mr.
24 Wilson did not return. He was sent letters indicating to come back in. Um, Mr.
25 Wilson indicates he received those letters and he did not come in to probation.

1 Um, he indicated that he did try to start BASS Intake, but that he never did
2 complete the BASS Intake. Uh, so the State believes that he has violated
3 probation by failing to report on multiple occasions, failing to start the BASS
4 Class as ordered by the Court, Your Honor.

5 THE COURT: Ms. Lynn?

6 MS. LYNN: Thank you, Judge. Judge, it's our position that the State has failed to
7 meet their burden of proof. Um, first in support of that position is that there have
8 been no rules of evidence presented today. Um, during today's hearing, no rules
9 of probation that Mr. Wilson was to follow, um, and so it's our position that the
10 State has failed to meet their burden of proof proving that there were certain
11 terms of conditions of probation and that, um, the Defendant failed to follow
12 through with those terms of probation. Um, additionally Mr. Wilson indicated
13 that he, um, attempted to stay in contact with probation and attempted to
14 participate in those BASS, um, Classes or start the BASS Program, but again, it's
15 our position that there's no evidence today of any terms or conditions of
16 probation that my client has specifically violated. Thank you, Judge.

17 THE STATE: Your Honor, the--the rules of probation had been filed under this
18 case number and are--made--have been made aware to the Court, um, thru the
19 statement of the Probation Officer indicated that he had told him to, um, show up
20 at certain times and he had failed to do so. Uh, the State again, uh, states that he
21 has violated his probation and that he should be, um, sentenced as such, Your
22 Honor.

23 THE COURT: Well at this time, um, I do note that this is, um, a case out of this
24 Court. I am aware of sentencing Mr. Wilson to probation and the terms of that
25 probation that is part of the record in this case, um, which I can and do take

DEFENSE'S WITNESS - JOSHUA WILSON (DIRECT)

1 Judicial Notice of. So at this time, I am going to find that Mr. Wilson has violated
2 the terms of his probation by failing to report as ordered and also failing to
3 complete or even begin the Batterer's Program as ordered by the Court. Um, Mr.
4 Marks any argument or recommendation regarding sentencing?

5 THE STATE: Uh, the recommendation that I'd received from Probation Officer
6 Joshua Garcia was that he was to serve, um, most of his time. Um, and that was
7 part of a plea agreement to prevent this hearing from taking place. The State
8 would request that all of his time be served this—at this juncture. Um, I was made
9 aware by, um, again Probation Officer Joshua Garcia that this isn't the first case
10 in which he has failed to complete BASS or has failed to report. So it—probation
11 has made it clear that they don't think he is a good candidate for supervised
12 probation.

13 THE COURT: Ms. Lynn?

14 MS. LYNN: Judge, may I present some evidence in regards to sentencing?

15 THE COURT: You may.

16 MS. LYNN: I would call my client, Joshua Wilson.

17 THE COURT: Ok. And he is still under oath.

18 MS. LYNN: Josh would you state your name for the record please?

19 DEFENDANT: Joshua Wilson.

20 MS. LYNN: And Joshua do you recall certain terms and conditions of probation
21 being ordered under this cause?

22 DEFENDANT: Yes Ma'am.

23 MS. LYNN: And as we talked about a little bit earlier today, um, one of those
24 conditions was that you participate in the BASS Program correct?

25 DEFENDANT: Yes.

DEFENSE'S WITNESS - JOSHUA WILSON (DIRECT)

1 MS. LYNN: And you had indicated that you reached out to start that program, is
2 that correct?

3 DEFENDANT: Yes.

4 MS. LYNN: Do you recall when you reached out to the BASS Program at Family
5 Service Society?

6 DEFENDANT: No. I'm not exactly sure?

7 MS. LYNN: Okay. And it was your understanding that, um, once you had
8 sufficient funds to actually pay for the classes, that's when you should begin to
9 engage in those classes correct?

10 DEFENDANT: Yes.

11 MS. LYNN: Um, is that something you're still willing to do?

12 DEFENDANT: Yeah.

13 MS. LYNN: Um, at this time you're incarcerated in the Grant County Jail. Is that
14 correct?

15 DEFENDANT: Yes.

16 MS. LYNN: If you were no longer incarcerated would you be seeking
17 employment?

18 DEFENDANT: Yes Ma'am. I was working before I was incarcerated.

19 MS. LYNN: Where were you working?

20 DEFENDANT: Capstone Logistics.

21 MS. LYNN: Do you believe that you could, um, still have that employment
22 available to you if you were released?

23 DEFENDANT: It's very possible.

24 MS. LYNN: Mr. Wilson, do you have any children?

25 DEFENDANT: Yes Ma'am.

DEFENSE'S WITNESS - JOSHUA WILSON (DIRECT)

1 MS. LYNN: Do you have any court ordered child support orders at this time?

2 DEFENDANT: No.

3 MS. LYNN: Okay. And so you support that child?

4 DEFENDANT: Yeah.

5 MS. LYNN: Okay. And, um, beyond supporting yourself and that child, um, what
6 other expenses do you have?

7 DEFENDANT: Um, my house payment and the lot rent and—and utilities.

8 MS. LYNN: If you were to return to your same employment, would you be able to
9 come up with sufficient funds to participate in the BASS Program?

10 DEFENDANT: Yes Ma'am.

11 MS. LYNN: Are you aware of the costs associated with the BASS Program?

12 DEFENDANT: Yes Ma'am.

13 MS. LYNN: Okay. Now when you're not incarcerated, do you have reliable
14 transportation?

15 DEFENDANT: Um, I will. I was just (unaudible). All I had to do was take the, uh,
16 Defensive Driving and I get my license back.

17 MS. LYNN: Okay. So you currently don't have a valid driver's license at this time?

18 DEFENDANT: No, but my family had indicated that they'd let my probation
19 officer know that they're willing to do anything to help me make any meetings
20 and—and attend the BASS Classes as needed.

21 MS. LYNN: Okay. And when you're not incarcerated, do you have, um, a reliable
22 way of staying in communication with probation, your employer, et cetera?

23 DEFENDANT: Yes Ma'am.

24 MS. LYNN: And do you have a phone of your own?

25 DEFENDANT: I—I can—I will.

DEFENSE'S WITNESS - JOSHUA WILSON (DIRECT)

1 MS. LYNN: Okay. And Mr. Wilson, at this time, what efforts would you make to
2 ensure that you comply with the terms of probation?

3 DEFENDANT: Everything needed. I need—I need to get out there back to my son.
4 So whatever it takes to be out there, I'm willing to do.

5 MS. LYNN: Okay. And even if that includes faithfully checking in with probation?

6 DEFENDANT: Yes Ma'am.

7 MS. LYNN: Whether in person or through phone contact?

8 DEFENDANT: Yes Ma'am.

9 MS. LYNN: And following through with getting the BASS Program completed?

10 DEFENDANT: Yes Ma'am.

11 MS. LYNN: Okay. When were you arrested, do you recall for this probation
12 violation?

13 DEFENDANT: Um, July 16th or 18th maybe?

14 MS. LYNN: You believe you'd been incarcerated since around July 16th or 18th of
15 this year? Is that correct?

16 DEFENDANT: Yes Ma'am.

17 MS. LYNN: Okay. Are you asking the Court to consider placing you back on
18 probation with the original terms of conditions of probation?

19 DEFENDANT: Yes Ma'am.

20 MS. LYNN: Okay. And can you ensure the Court that you will follow through with
21 these terms and conditions at this point?

22 DEFENDANT: Yeah, like I said my fa—my family, my mother, and my
23 grandfather, grandmother. They're willing to help me do whatever it takes to
24 meet—meet whatever I—I need to do to get it done.

25 MS. LYNN: Did you have their support previously?

DEFENSE'S WITNESS - JOSHUA WILSON (CROSS)

1 DEFENDANT: Not as much as they're willing to do now.

2 MS. LYNN: Okay. I have no additional questions.

3 THE COURT: Mr. Marks, any questions?

4 THE STATE: Are you familiar with Cause Number 27D02-1512-F6-464? It was a
5 domestic battery from 2015.

6 DEFENDANT: Yeah.

7 THE STATE: You remember that you were found guilty and plead to domestic
8 battery against the victim in that case Lin-Lindsay Spencer?

9 DEFENDANT: Yeah.

10 THE STATE: And were you ordered to complete BASS for that?

11 DEFENDANT: Yes Sir.

12 THE STATE: And did you complete BASS for that cause number?

13 DEFENDANT: No.

14 THE STATE: And why was that?

15 DEFENDANT: Priorities weren't in line then.

16 THE STATE: If I told you that was because of an invasion of privacy, um,
17 conviction on Lindsay Spencer, that put you back into jail, would that be
18 accurate?

19 DEFENDANT: Yeah, but, uh, during the whole time, she was trying (inaudible) to
20 get the No Contact Order dropped. That's the mother of my son, so..

21 THE STATE: Why would the Court believe that in that case, you were unable to
22 complete it, as a condition of probation that you have been found to have violated
23 probation by not completing it, but now you're willing to complete it?

24 DEFENDANT: As I said before, my family I have-I have more support from my
25 family now. I'll be more able to, uh, get things done. Uh, I didn't have as much

1 contact with them as I did back then.

2 THE STATE: Nothing further, Your Honor.

3 THE COURT: Ms. Lynn, any other questions?

4 MS. LYNN: No additional questions, Judge.

5 THE COURT: Any other evidence?

6 MS. LYNN: No additional evidence at this time.

7 THE COURT: Any further evidence from the State?

8 THE STATE: No, Your Honor.

9 THE COURT: Argument from the State.

10 THE STATE: Your Honor, this is a repeating situation between Mr. Wilson, um,

11 the victim in this case Lindsay Spencer, and his failure to comply with probation

12 rules. Uh, the State has no confidence and is very dubious that he will, at all, try

13 to report to probation and complete the BASS Class. And the State again requests

14 that his entire term be served in this cause.

15 THE COURT: Ms. Lynn?

16 MS. LYNN: Thank you, Judge. Judge, we are requesting that the Defendant be

17 returned to probation with the original terms and conditions. This is his first

18 violation in this, um, matter. First violation of probation in this matter. Um, my

19 client has indicated to me that—or to the Court that one thing that is different this

20 time is he does the support of his family, um, to help make sure that he is able to

21 complete these classes and, um, ensure that he has reliable communication, um,

22 transportation to comply with the terms of his probation. Um, as he has testified

23 he does have a young—a young child or a son, um, and so we would request that

24 he be allowed to return to probation, um, since this is his first violation, um, to

25 attempt to follow through and comply with the terms of the—originally ordered

1 probation. Thank you, Judge.

2 THE COURT: Well at this time, uh, I find the following aggravating factors. First
3 of all, this is the third crime involving the same victim, Lindsay. Um, first was a—a
4 felony domestic violence case. Mr. Wilson was placed on probation at that time
5 and ordered to do the Batterer's Program. Failed to do that Batterer's Program.
6 Violated the terms of his sentence and No Contact Order in that first case by
7 committing an invasion of privacy. And now, uh, we have new criminal offense,
8 domestic violence, domestic battery in the presence of that child that Mr. Wilson
9 indicates that he needs to get out and take care of, uh, as well as, um, interference
10 with the reporting of a crime. Um, Mr. Wilson has not taken probation seriously
11 in this case either. He's once again not complied with BASS and failed to report to
12 probation admittedly since March of 2019. Um, I don't believe Mr. Wilson has his
13 priorities straightened out either, so sentence will be all of the executed, all of the
14 suspended sentence: two years twenty-two days, which had been suspended
15 previously. I also need to advise you Mr. Wilson of your right to appeal the
16 conviction and sentence. You have the right to appeal the conviction and sentence
17 in this case. In order to do so, you must file either a Notice of Appeal or a Motion
18 to Correct Error within thirty days. If you choose to file a Motion to Correct Error,
19 you must file your Notice of Appeal within thirty days of an adverse ruling on that
20 Motion. Failure to comply with these requirements will result in the forfeiture of
21 your right to appeal. You have a right to be represented by counsel at all stages of
22 the proceedings, including any appeal which you may wish to pursue. If you are
23 unable to afford an attorney, I'm obligated to appoint one to represent you at no
24 cost to you. Do you understand your appellate rights?

25 DEFENDANT: Yes Ma'am.

1 THE COURT: Okay. And do you wish me to send this case to the public defender
2 for appointment of pu–appellate counsel?

3 DEFENDANT: Yes Ma’am.

4 THE COURT: Okay. I will do that today. Thank you.

5 THE STATE: Thank you, Your Honor.

6 THE COURT: Thank you.

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8 [Proceedings conclude at 10:58 a.m. on August 26, 2019]

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REPORTER’S CERTIFICATE

I, Danielle Baldwin, Reporter of the Grant Superior Court No. 2, Grant County, State of Indiana, do hereby certify that I am the Court Reporter of said Court, duly appointed and Sworn to report the evidence of causes tried therein.

That upon the Fact Finding Hearing in this cause held on the 26th day of August, 2019, I took down, by mechanical device, all of the statements by counsel, the evidence given during the hearing of this cause, the objections of counsel thereto, and the ruling of the Court upon such objections, the introduction of exhibits, the objections thereto and the Court’s rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed by Seal this 6th day of November, 2019.

/s/ Danielle N. Baldwin
Danielle N. Baldwin, Court Reporter