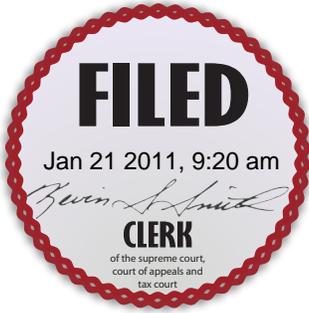


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BRANDY LOZIER)

Appellant,)

vs.)

STATE OF INDIANA,)

Appellee.)

No. 15A01-1007-CR-347

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Jonathan Cleary, Judge
Cause Nos. 15D01-0908-FD-169 and 15D01-0908-FD-186

January 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Brandy Lozier (“Lozier”) appeals following the Dearborn Superior Court’s revocation of her probation and argues that the trial court’s imposition of four years of her previously suspended sentence was an abuse of discretion. We affirm.

Facts and Procedural History

On January 8, 2010, on charges filed under two separate cause numbers, Lozier pleaded guilty to Class D felony possession of a controlled substance and Class D felony operating a vehicle while intoxicated. Lozier was sentenced to an aggregate six-year sentence, with all but fifty-eight days suspended to probation. As a condition of her probation, Lozier was ordered not to consume illegal drugs or controlled substances. Lozier was also ordered to participate in and abide by the rules of Dearborn County’s Accountability, Change, and Community Court, commonly referred to as the drug court. The drug court’s rules also required Lozier to refrain from using illegal drugs or controlled substances.

Eleven days later, on January 19, 2010, Lozier tested positive for marijuana. The following week, Lozier tested positive for and admitted to using oxycontin and cocaine. As a result, Lozier was ordered to undergo an inpatient detoxification program, and upon completion of the program, Lozier was incarcerated until her admission to Richmond State Hospital for inpatient drug treatment on April 28, 2010. Less than one month later, Lozier was removed from the treatment program after again testing positive for controlled substances. As a result, Lozier’s participation in the drug court was terminated.

On May 20, 2010, the Probation Department filed a “Request for Probation Violation Hearing” alleging that Lozier had violated her probation by failing to abide by the drug court’s rules. At a hearing held on May 27, 2010, Lozier admitted to the violation. On June 25, 2010, the trial court revoked Lozier’s probation and ordered her to serve four years of her previously suspended sentence. Lozier now appeals.

Discussion and Decision

Lozier contends that the trial court abused its discretion by ordering her to serve four years of her previously suspended sentence. We review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Moreover, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” Id. Were trial judges not afforded this discretion, they might be less inclined to order probation for future defendants. Id.

Pursuant to Indiana Code section 35-38-2-3(g) (2004), after finding that a person has violated a condition of his or her probation, the trial court may:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Here, Lozier admitted to violating the terms of her probation, but nonetheless argues that the trial court abused its discretion when it ordered her to serve four years of her previously suspended sentence. Specifically, Lozier asserts that her continued drug use is not indicative of poor character; rather, she claims her choice “to medicate herself with drugs and alcohol” stems from her difficult childhood and trauma she suffered as a result of being raped by her father. Appellant’s Br. at 5. Further, Lozier argues that she should have been given another chance on probation because she poses no risk of harm to the public.

The facts tell a different story. Lozier tested positive for marijuana eleven days after being placed on probation. The next week, Lozier tested positive for and admitted to using oxycontin and cocaine. However, the drug court did not immediately seek revocation. Instead, Lozier was ordered to undergo detoxification and to receive inpatient drug treatment. Rather than taking advantage of the second chance provided her, Lozier chose to use controlled substances within weeks of her admission to Richmond State Hospital, causing her removal from the drug treatment program. In ordering Lozier to serve four years of her previously suspended sentence, the trial court stated:

We gave you the best resource that this county has and I would argue one of the best resources in the State of Indiana and you completely threw it back in the drug court’s face. You lasted probably as short as I’ve seen anyone last at Richmond State Hospital. If you were to go there privately today your bill would be approximately \$80,000.00 to complete that program. That was thrown in Richmond’s face and I agree that you need help but quite frankly there’s nothing that this Court has left to offer

Tr. p. 28.

Under these facts and circumstances, we conclude that the trial court acted well within its discretion when it ordered Lozier to serve four years of her previously suspended sentence.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.