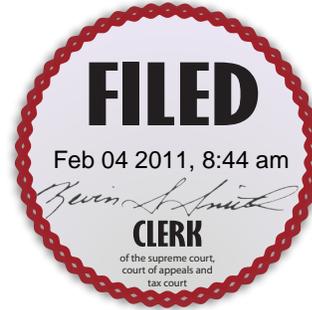


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

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Lawrenceburg, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JEZRAEL T.S. VAUGHN,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

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No. 15A01-1007-CR-424

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0204-FB-0005

February 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jezrael T.S. Vaughn (“Vaughn”) appeals following the Dearborn Circuit Court’s revocation of his probation, arguing that the trial court’s reinstatement of a previously suspended sentence of eight years and one hundred forty days was an abuse of discretion. We affirm.

Facts and Procedural History

On March 7, 2003, Vaughn pleaded guilty to Class B felony dealing in a controlled substance. Twelve other, drug-related charges against Vaughn were dismissed by the State as part of his plea agreement. The trial court sentenced Vaughn to a term of ten years, with eight years and one hundred forty days suspended to probation.

On March 27, 2009, the Ohio Circuit Court found probable cause that on or about March 25, 2009, while on probation, Vaughn committed Class B felony possession of a narcotic drug and Class D felony possession of marijuana. Vaughn subsequently pleaded guilty in the Ohio Circuit Court to Class B felony dealing in a controlled substance.

On June 23, 2010, the Dearborn Circuit Court found that Vaughn had violated the terms of his probation by committing another dealing offense. The trial court found that Vaughn’s criminal history of dealing in controlled substances coupled with his subsequent criminal conviction for dealing while on probation made him an inappropriate candidate for continued probation. Accordingly, the trial court revoked Vaughn’s previously suspended sentence and ordered that Vaughn serve the remaining eight years and one hundred forty days in the Indiana Department of Correction.

Discussion and Decision

We first note that the State has declined to file an appellee’s brief. The obligation of controverting arguments presented by the appellant properly remains with the State. Bovie v. State, 760 N.E.2d 1195, 1197 (Ind. Ct. App. 2002). Thus, “[w]hen the appellee does not submit a brief, the appellant may prevail by making a *prima facie* case of error – an error at first sight or appearance.” Id. We are nevertheless obligated to correctly apply the law to the facts of the record to determine if reversal is required. Id.

Vaughn argues that the trial court abused its discretion when it ordered him to serve the entire remainder of his previously suspended sentence of eight years and one hundred forty days in the Indiana Department of Correction. We review a trial court’s sentencing decision following a probation revocation for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005). An abuse of discretion will be found “where the decision is clearly against the logic and effect of the facts and circumstances.” 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.

The sentencing of a defendant following a probation violation is governed by statute. Indiana Code section 35-38-2-3(g) (2004) provides that upon finding a violation of probation, a 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 year beyond the original probationary period; or (3) order execution of the sentence that was suspended at the time of initial sentencing.” The fact that the trial court has options under section 35-38-2-3(g) implies it has discretion in deciding which option

is appropriate under the circumstances of each case. Johnson v. State, 692 N.E.2d 485, 488 (Ind. Ct. App. 1998).

Here, Vaughn admitted to violating the terms of his probation, but nonetheless argues that the trial court abused its discretion when it revoked the full remainder of his suspended sentence. Urging this court to consider his untreated drug addiction, the fact that he admitted to violating probation, a criminal history of only two prior convictions and the cost to incarcerate him, Vaughn argues that the trial court revoked too much time.

The trial court considered several factors in finding that Vaughn was not an appropriate candidate for continued or extended probation. These factors included Vaughn's prior criminal history of dealing controlled substances, his continued dealing of controlled substances while on probation for another dealing conviction and the increase of his involvement in dealing controlled substances since his prior conviction, including multi-state and international transactions. Thus, under Indiana Code section 35-38-2-3(g), the trial court's decision to order execution of the remainder of Vaughn's sentence was well within its discretion. Under these facts and circumstances, the trial court did not abuse its discretion when it ordered Vaughn to serve the previously suspended portion of his sentence.

Affirmed.

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