

Appellant-defendant Antwan Richmond appeals the revocation of his probation and the imposition of his three-year previously suspended sentence. Specifically, Richmond argues that the evidence presented at the probation revocation hearing was insufficient to support revocation and that the trial court erred in ordering him to serve the three-year suspended sentence. Concluding that the evidence was sufficient to support Richmond's probation revocation and finding that the trial court did not abuse its discretion in sentencing Richmond, we affirm the judgment of the trial court.

FACTS

On May 9, 2000, the State charged Richmond with two counts of child molesting, a class B felony. Richmond pleaded guilty to one count of class B felony child molesting on August 8, 2000, and the second count was dismissed. Pursuant to the plea agreement, the trial court sentenced Richmond to nine years imprisonment with three years suspended, for a total of six years executed.

Richmond was released from prison and was placed on probation on December 30, 2005. On March 27, 2006, the State filed a notice of probation violation, alleging that Richmond had violated his probation because he had (1) been arrested for invasion of privacy, (2) failed to report to a hearing as directed, (3) failed to maintain a single verifiable address, and (4) failed to abide by the trial court's no contact with minors order. Appellant's App. p. 51. The trial court subsequently dismissed the first and fourth allegations.

A probation revocation hearing on the second and third allegations was held on June 14, 2006. During the hearing, Marion County Probation Officer Patrick Jarosh

testified that Richmond, while on probation, failed to report for a scheduled administrative hearing on March 15, 2006. Jarosh also testified that on March 20, 2006, he and Deputy Tim Moriarty looked for Richmond at 4077 Windhill Drive—the location that the Marion County Probation Department (the Department) had on file as Richmond’s address. When there was no answer at the apartment, the apartment complex management staff told the officers that the occupants of the apartment had been evicted on March 17, 2006, and that the officers should check 4130 Cordell Street, another apartment in the complex. The officers found Richmond upon arriving at the second apartment.

Following the probation revocation hearing, the trial court found that Richmond had violated his probation by failing to report as directed and by failing to maintain a verifiable address. The trial court revoked Richmond’s probation and ordered him to serve the previously suspended three-year sentence. Richmond now appeals.

DISCUSSION AND DECISION

I. Sufficiency

One of the conditions of Richmond’s probation was that “unless authorized [he] shall maintain a single verifiable residence with [the Department], any change of address must be approved by probation.” Tr. p. 7. Richmond first argues that the State presented insufficient evidence to revoke his probation based on his alleged failure to maintain a verifiable address. Specifically, Richmond argues that he was staying with Kentrell Vertner at the address that the Department had on file, he was not paying rent to Vertner,

and he did not know that Vertner had been evicted. Richmond argues, therefore, that he did not knowingly violate this condition of his probation.

In addressing Richmond's contention that the evidence was insufficient to revoke his probation, we note that the ability to serve a sentence on probation has been described as a "matter of grace" and a "conditional liberty that is a favor, not a right." Marsh v. State, 818 N.E.2d 143, 146 (Ind. Ct. App. 2004) (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). Moreover, a probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox, 706 N.E.2d at 551. A trial court's decision to revoke probation is reviewed for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. We consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of the witnesses. Id. at 954-55.

The gravamen of Richmond's argument is that he did not knowingly violate this condition of his probation; therefore, the trial court abused its discretion in ordering the revocation. However, Jarosh testified at the hearing that when the officers questioned Richmond at the second apartment, he initially maintained that he was still residing at Vertner's apartment. Upon further questioning, however, Richmond admitted to the officers that he was "homeless." Tr. p. 14. Furthermore, Vertner was with Richmond when the officers located him at the second apartment. Id. at 13. Therefore, Richmond cannot successfully claim that he had not been in contact with Vertner since the eviction.

It was the trial court's duty to weigh the evidence presented and assess the credibility of the witnesses at the revocation hearing. Based on the evidence presented, including Vertner's testimony that he and Richmond "were best friends," the trial court concluded that Richmond knew about the March 17, 2006, eviction and consciously did not alert the Department that he no longer lived at that address. Id. at 28, 42-43. As the trial court noted when it made its determination, "when you are a sex offender you . . . simply don't have the same freedom of movement that you or I or the other people have." Id. at 43. Richmond's argument on appeal is a request for us to reweigh the evidence—a practice in which our court does not engage. The trial court's finding that Richmond violated this condition of his probation is supported by sufficient evidence; therefore, we conclude that the trial court acted within its discretion when it revoked his probation.¹

II. Sentencing

Richmond also argues that the trial court abused its discretion by sentencing him to three years imprisonment, the entire suspended portion of his nine-year sentence. Specifically, Richmond argues that his "minor violations . . . do[] not warrant imposition of the entire three-year suspended sentence." Appellant's Br. p. 7.

¹ Richmond does not deny that he failed to report to the March 15, 2006, hearing and does not argue on appeal that the trial court erroneously revoked his probation for that violation. The trial court's decision to revoke Richmond's probation could be upheld on this violation alone. See, e.g., Bussberg v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005) (holding that "[p]roof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation), trans. denied.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion.² Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). If the trial court finds that the person violated a condition of probation, it may order the execution of any part of the sentence that was suspended at the time of initial sentencing. Stephens v. State, 818 N.E.2d 936, 942 (Ind. 2004).

Here, Richmond violated two conditions of his probation. Richmond does not dispute that the trial court acted within its statutory authority when it ordered him to serve the suspended three-year sentence. Ind. Code § 35-38-2-3(g).³ Rather, Richmond argues that the trial court's imposition of the entire previously suspended sentence was excessive. However, it is ultimately within the trial court's discretion as to what sanction to impose under the statute. Abernathy v. State, 852 N.E.2d 1016, 1022 (Ind. Ct. App. 2006). As we held in Abernathy:

² Our court has specifically rejected the argument that probation revocation sentences should be reviewed under Indiana Appellate Rule 7(B), and we continue to review the reasonableness of such sentences for an abuse of discretion. See Sanders, 825 N.E.2d at 957.

³ Indiana Code section 35-38-2-3(g) provides:

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the 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; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

If the trial court were to exercise other sanction options more liberally, the “grace of probation” would be rendered meaningless. Probation violators would be less apt to modify their behavior and abide by the terms of probation in the absence of a need to avoid the imposition of a suspended sentence.

Id. Therefore, we conclude the trial court did not abuse its discretion when it ordered Richmond to serve the entire portion of his three-year suspended sentence for violating two conditions of his probation.⁴ See, e.g., Sandlin v. State, 823 N.E.2d 1197, 1198 (Ind. 2005) (affirming the trial court’s decision to order the defendant to serve his entire four-year suspended sentence).

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

⁴ While Richmond directs us to language from Podlusky v. State, 839 N.E.2d 198 (Ind. Ct. App. 2005), to support his contention—an opinion the writing judge here also authored—we do not find the facts of Podlusky to be comparable to the facts here. We also note that, while expressing hesitation, we ultimately upheld the trial court’s imposition of Podlusky’s entire two-year suspended sentence. Id. at 204.