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IN THE
COURT OF APPEALS OF INDIANA

SEAN SWINDELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0907-CR-429
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-9204-CF-58426

February 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Sean Swindell appeals the trial court's decision to impose a fifteen-year sentence, which is the full term of a previously suspended sentence, following Swindell's admitted violation of the terms of his probation. Finding no error, we affirm.

FACTS

On October 21, 1992, Swindell pleaded guilty to three counts of class B felony child molesting and one count of class C felony criminal confinement. Pursuant to the plea agreement, Swindell was sentenced to an aggregate term of fifty years, with thirty-five years executed, fifteen years suspended, and ten years on probation.

Swindell's probation began on August 29, 2006. While he was on probation, he missed a mandatory sex offender meeting on Halloween and a second sex offender treatment class at a later date. Additionally, he admitted to viewing obscene material and hiring a prostitute. Consequently, Swindell's probation was modified to include eighty hours of community service. Additionally, Swindell was warned that any additional violation of the terms of his probation would result in a request for revocation of the suspended sentence.

On March 25, 2009, the State filed a notice of probation violation, alleging that Swindell had been arrested on a new charge, in violation of the terms of his probation. On July 1, 2009, at the probation violation hearing, Swindell admitted to violating the terms of his probation after being convicted of operating a vehicle while intoxicated and failing to stop after an accident. In revoking Swindell's probation, the trial court made the following comments:

> . . . I cannot help but be concerned when I see you veering off the path that you need to be on. You are not an individual that—that I feel comfortable when you're off the path. You were convicted in this case of abducting a one-year-old child and having sex with that child, and leaving it in the woods to be found later, and that is a very scary, very scary offense.
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> ***
>
> And what I'm hearing is that you're off—off the path you need to be on, using alcohol, missing some of your—you know, it's not lost on me that the probation officer tells me that you missed some of your sex offender counseling. I'm just not willing to take the risk . . . and I cannot help but see the use of alcohol and missing some of your counseling sessions and those things as warning signs . . . .

Tr. p. 19-20. The trial court revoked Swindell's probation and imposed the previously suspended fifteen-year term. Swindell now appeals.

DISCUSSION AND DECISION

Swindell argues that the trial court abused its discretion by imposing the full fifteen-year term that was previously suspended. Our Supreme Court has cautioned that "[p]robation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). The trial court decides the conditions of probation and may revoke probation if the conditions are violated. Id. If the trial court finds that a defendant has violated a condition of probation, it may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." Ind. Code § 35-38-2-3(g).

Swindell contends that the trial court erred by focusing on his failure to attend the two sex offender meetings because the Probation Department addressed those failures

administratively. What Swindell fails to note, however, is that after he missed those meetings, he was placed on what amounts to a zero tolerance policy. Appellant's App. p. 54. On November 14, 2008, Swindell signed a form stating that "[a]ny further non-compliance of his conditions of probation will result in the filing of a violation of probation with the Court." Id. After signing that form, Swindell went on to admit, during a March 20, 2009, administrative hearing, that he had viewed obscene matter and hired a prostitute. Id. at 55. The Probation Department gave him yet another chance, requiring that he attend two meetings per week, abide by a curfew, and complete all assignments from his counselor. He agreed. Four days later, he was arrested and charged with operating a vehicle while intoxicated, operating a vehicle with a blood alcohol concentration of .08-.15%, and failing to stop at the scene of an accident.

Swindell has been given multiple chances. At the probation violation hearing, he admitted that he had violated the terms of his probation by amassing convictions for operating a vehicle while intoxicated and failing to stop at the scene of an accident. On that basis alone, the trial court would have been justified to impose all of the previously suspended sentence, and we do not find that the trial court also took into consideration that Swindell has also admitted to violating probation multiple times in the past. Therefore, we do not find that the trial court abused its discretion by revoking probation and imposing a fifteen-year sentence on Swindell.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.