



## STATEMENT OF THE CASE

Appellant-Respondent, Barry L. Johnson (Johnson), appeals the trial court's revocation of his probation.

We affirm.

## ISSUE

Johnson raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion in ordering Johnson to serve the entirety of the previously suspended portion of his sentence when it revoked his probation.

## FACTS AND PROCEDURAL HISTORY

On June 1, 2005, the State filed an Information under Cause No. 27D01-0505-FB-104 charging Johnson with Count I and II, robbery, Class C felonies. On July 12, 2005, the State filed an Information under Cause No. 27D01-0507-FB-115 charging Johnson with Count I, criminal confinement, a Class B felony; Count II, intimidation, a Class C felony; Count III, battery resulting in serious bodily injury, a Class C felony; and Count IV, battery resulting in bodily injury, a Class A misdemeanor. On July 29, 2005, the State amended the Information under Cause No. 27D01-0505-FB-115 by additionally charging Johnson with Count V, being a habitual offender.

On July 24, 2006, Johnson entered into a plea agreement with the State in which he agreed to plead guilty to Count II, robbery, as a Class C felony under Cause No. 27D01-0505-FB-104; Count I, criminal confinement, a Class B felony, Count II, intimidation, a Class C felony, and Count III, battery resulting in serious bodily injury, a Class C felony,

under Cause No. 27D01-0507-FB-115, in exchange for the State dismissing all remaining charges, including the habitual offender charge and a pending probation violation. On August 29, 2006, the trial court sentenced him to fourteen years, with eight years executed and six years served on supervised probation.

On October 27, 2008, Johnson was ordered into the Community Transition Program after serving the executed portion of his sentence. As required by that program, Johnson was admitted to Grant County re-entry court and placed on home detention. On the same date, Johnson signed the rules of home detention which set forth the conditions of his supervision. As conditions of his home detention, Johnson agreed that going outside of his home was prohibited without approval from the program administrator or a staff officer, agreed to submit to random urine drug testing and alcohol screening, and agreed to report to the program administrator when ordered to do so. By signing this document, Johnson acknowledged that the trial court could order his arrest and revoke home detention at any time for violating any of the rules, including committing another criminal offense or driving without a valid driver's license.

On June 1, 2009, the State filed a petition to revoke Johnson's probation alleging that Johnson had failed to appear for a mandatory drug screen and was terminated from re-entry court. On June 25, 2009, Johnson was found to have violated the terms of his probation and was given time served, at which time the trial court returned Johnson to supervised probation and readmitted him to re-entry court. On October 26, 2009, the State filed a second petition to revoke Johnson's probation. The petition alleged that Johnson had committed a new

offense when he was arrested for driving while suspended on October 15, 2009, and that he had again been terminated from the re-entry court program on October 23, 2009.

On March 12, 2010 the State filed a third petition to terminate Johnson's participation in Grant County re-entry court. The petition claimed that Johnson was arrested for driving while suspended with a prior conviction, that Johnson admitted to smoking three marijuana joints, and that Johnson was not home during curfew checks done on November 5, 2009, December 8, 2009, and December 10, 2009.

On April 12, 2010, the trial court conducted a hearing on the State's petitions. According to Jeremy Chandler (Chandler), of the Grant County re-entry court program, the program had already implemented a series of sanctions, including two separate jail stays, to address Johnson's non-compliance issues prior to recommending termination from the program. Also it was established that Johnson was not at home for three curfew checks, was terminated from the Milestone treatment program, and failed to appear for a re-entry court hearing. Johnson testified that on the same night that probation attempted to visit his home, he was not home due to an "altercation" with his wife that resulted in her making him leave the house. (Transcript p. 35). Johnson knew he had violated the rules of probation and decided to stop going to classes and reporting to probation based on being told that there would be no tolerance for further non-compliance. According to Chandler, if a defendant had to leave the residence at the risk of having a fight or an argument, he would expect a phone call "immediately after leaving the house." (Tr. p. 11). However, the re-entry court program did not have any contact with Johnson from December 11, 2009 through March 5,

2010, resulting in approximately twelve to fifteen absences from re-entry court, and daily absences from the day reporting meetings. During this time period, calls were made in an attempt to contact Johnson and a warrant was issued for his arrest. On March 5, 2010 Johnson was arrested on the active probation warrant and was taken into custody where he remained pending the disposition of this case. At the conclusion of the evidence, the trial court found the State had met its burden of proof and found Johnson guilty of violating probation. The trial court revoked his supervised probation, terminated Johnson's participation in re-entry court, and ordered him to serve the balance of his previously suspended sentence.

Johnson now appeals. Additional facts will be provided as necessary.

#### DISCUSSION AND DECISION

A trial court's sentencing decisions for violations of probation are reviewed for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion has occurred when a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 889 N.E.2d 836, 839 (Ind. Ct. App. 2008). In determining whether the trial court abused its discretion, we do not reweigh evidence, and this court considers conflicting evidence in a light most favorable to the trial court's ruling. *Id.*

Johnson does not dispute that the trial court had sufficient evidence to revoke his probation; rather he challenges the trial court's decision ordering him to serve the entire remaining suspended sentence. Johnson contends that the trial court's decision to impose his

“entire remaining suspended sentence was an abuse of discretion,” due to his progress within court-ordered programs. (Appellant’s Br. p. 5).

When a trial court finds a person has violated a condition of probation and the petition to revoke is filed within the term of probation, the court may continue the person on probation, extend the term of probation, or order execution of all or part of the original suspended sentence. I.C. § 35-38-2-3(g). This statute allows judges to be flexible in imposing sentences based on the nature of the offense and the characteristics of the defendant. *Prewitt*, 878 N.E.2d at 187.

Here, we consider the imposition of Johnson’s entire executed sentence an appropriate exercise of judicial discretion. After the State filed its initial petition to revoke Johnson’s probation for failure to appear for a mandatory drug screen and termination from re-entry court, less than one month later the trial court gave credit for time served and ordered him readmitted to re-entry court. At that time, the trial court gave Johnson a second chance at complying with his court orders instead of imposing an executed sentence. Johnson continued to have compliance problems and received five sanctions, including jail time, community service hours, imposition of a curfew and lowering the curfew. All of these sanctions were chances for Johnson to avoid the possibility of probation revocation. Less than four months later, Johnson was arrested for driving while suspended. The State filed a second petition to revoke his probation based on the new arrest charge and Johnson’s second termination from the re-entry court program. The State also filed a formal petition to terminate Johnson’s participation in the Grant County re-entry court program.

Johnson was offered multiple opportunities for rehabilitation: by placing Johnson in the re-entry court program after his executed sentence, by reinstating probation and readmitting Johnson to the reentry court after he first violated the terms of probation, and by imposing a series of sanctions for further compliance problems before the State filed the second petition to revoke his probation. These multiple opportunities for rehabilitation likewise created opportunities for Johnson to be familiar with both the rules and consequences for violating those rules. Although Johnson argues that he has made positive progress toward rehabilitation, his continued non-compliance and new arrest charge instead indicate that he has taken the “grace and conditional liberty” of probation for granted. *Johnson v. State*, 659 N.E.2d 194, 198 (Ind. Ct. App. 1995).

#### CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it ordered Johnson to serve the balance of his previously suspended sentence at the Department of Correction after revoking his probation.

Affirmed.

ROBB, C.J., and BROWN, J., concur.