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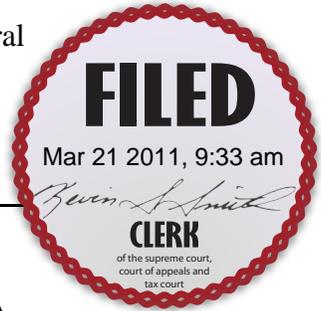
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**IN THE
COURT OF APPEALS OF INDIANA**

NICOLE COOPER,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

No. 34A02-1004-CR-506

APPEAL FROM THE HOWARD SUPERIOR COURT I
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0804-FD-289

March 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Nicole Cooper (Cooper), appeals the sentence imposed by the trial court after the court revoked her probation.

We affirm.

ISSUE

Cooper raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion when it ordered her to serve the remainder of her suspended sentence at the Indiana Department of Correction after revoking her probation.

FACTS AND PROCEDURAL HISTORY

On April 27, 2007, the State charged Cooper with Count I, theft as a Class D felony, Ind. Code § 35-43-4-2(a); Count II, possession of marijuana as a Class D felony, I.C. § 35-48-4-11(1); and Count III, false informing as a Class A misdemeanor, I.C. § 35-44-2-2(c)(3). On November 26, 2008, Cooper pled guilty to Count I, pursuant to a plea agreement that dismissed the remaining counts. On January 14, 2009, Cooper was sentenced to the Indiana Department of Correction for three years, with 188 days credit for time served, and the remaining 908 days to be suspended on supervised probation. On July 8, 2009, the State filed a petition to revoke the suspended sentence alleging that Cooper had been arrested for forgery, counterfeiting, unlawful possession of a syringe, and aiding inducing and causing invasion of privacy. On November 5, 2009, the parties filed a Recommendation of Plea Agreement, in which Cooper agreed to plead guilty to unlawful possession of a syringe as a Class D felony, I.C. § 16-42-19-18, and plead true to the violation of probation, in exchange

for the State dismissing the other charges. In addition, the plea agreement left sentences to the discretion of the court.

On December 16, 2009, the Howard County Adult Probation Department filed a presentence investigation report which recommended that Cooper be evaluated for the Drug Court Program. Cooper filed a motion to continue so she could attend the drug court evaluation. On January 4, 2010, the trial court released Cooper and ordered her to report to the Howard County Probation Department and Open Arms for the evaluation. On January 27, 2010, that release was revoked and Cooper was remanded to the custody of the Sheriff pending her sentencing hearing.

On March 3, 2010, during the sentencing hearing, Cooper admitted the allegations contained in the State's petition to revoke her suspended sentence. The trial court accepted the recommendation of plea agreement entered into by the parties and revoked Cooper's probation. The trial court imposed the remaining balance of Cooper's suspended sentence of 908 days, to be served consecutively to the three year sentence for the unlawful possession of a syringe.

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

DISCUSSION AND DECISION

Cooper concedes that she violated the terms of her probation by committing the new offenses. In addition, Cooper admits that the trial court was authorized to impose the entire suspended sentence "to the extent that the imposed sentence was based on the commission of the new offense." (Appellant's Br. p. 4). Cooper does not dispute that the trial court had

sufficient evidence to revoke her probation. Cooper contends that the trial court's decision to impose her entire remaining suspended sentence was an abuse of discretion, by letting Cooper's failure of the drug court evaluation influence its sentencing 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.* In general, as long as the trial court follows the procedures outlined in I.C. § 35-38-2-3, the trial court may properly order execution of a suspended sentence. *Crump v. State*, 740 N.E.2d 564, 573 (Ind. Ct. App. 2000). 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 gives the trial court options when it finds that a defendant has committed a violation of probation. It can also be implied from the statute that "the trial court 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). Therefore, the trial court's decision is reviewed only for an abuse of discretion. *Id.*

Cooper asserts that because the trial court engaged in discussion of her failed drug court evaluation, the evaluation had an “effect on the outcome and sentencing.” (Appellant’s Br. p. 4). We disagree. Given the fact that Cooper could not successfully complete the intense supervision during her evaluation in the drug court program, the trial court noted that Cooper would not likely be successful on a lesser level of supervision. The trial court’s discussion of Cooper’s failed evaluation merely provides support to an illustration already depicted by Cooper’s compliance issues with probation and new arrest charges.

Cooper also suggests that other possible sanctions were available to the trial court to address her substance abuse issues “instead of simply ordering incarceration,” but fails to provide details as to what those alternatives might be. (Appellant’s Br. p. 5).

Here, we do not consider the imposition of the executed sentence to be an abuse of discretion. Although Cooper argues that the trial court should now take into consideration her substance abuse issues and place her in a treatment facility rather than a correctional facility, the trial court reasoned that Cooper was already given ample opportunities to rehabilitate. After the State filed its petition to revoke Cooper’s suspended sentence, Cooper entered into a plea agreement where she admitted to committing the new offenses and left sentencing to the discretion of the court. After entering into the plea agreement, the trial court showed leniency by granting Cooper’s request to be released to attend an evaluation at the drug court program. Cooper states that she was not required to participate in drug court; however, on January 4, 2010, the court released Cooper and specifically ordered her to report to the Howard County Probation Department and Open Arms within 24 hours of release for

the purpose of obtaining an evaluation for the drug court program. In less than a month after being released, Cooper had failed the drug court evaluation.

By originally ordering Cooper to serve a suspended sentence on probation rather than a full executed sentence in the Department of Correction, by ordering Cooper to successfully attend and complete the Howard County Drug and Alcohol Program while on probation, and by permitting Cooper to be released from custody to seek entry into the drug court program after she committed a series of new offenses while under probation supervision, the trial court offered Cooper multiple opportunities for rehabilitation. These multiple opportunities for rehabilitation likewise created opportunities for Cooper to be familiar with both the rules and the consequences for violating those rules. In short, Cooper demonstrated to the trial court that she is not a good candidate for the type of alternative sentencing option she seeks. Instead of taking advantage of the opportunity for rehabilitation while on probation, she incurred four new arrest charges within less than six months of her release. By her continued disregard for the law and lack of effort to seek treatment for her substance abuse issues, Cooper demonstrated that she has no intention to follow the law or improve her situation.

Consequently, we find that the trial court did not abuse its discretion in ordering the balance of Cooper's suspended sentence executed, as it was within the trial court's discretion

to “order execution of all or part of the sentence that was suspended at the time of the initial hearing.” I.C. § 35-38-2-3(g)(3).

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion by ordering Cooper to serve the remainder of her sentence after revoking her probation.

Affirmed.

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