



## Case Summary

Jasper Adams appeals the trial court's revocation of his probation. We affirm.

### Issues

The reordered and restated issues before us are:

- I. whether Adams may challenge the revocation of his probation in this direct appeal; and
- II. whether the trial court abused its discretion in ordering Adams to serve the entirety of his previously suspended sentence.

### Facts

On November 30, 2007, Adams pled guilty to Class D felony operating while intoxicated. The plea agreement provided for a sentencing term of 1095 days (three years), all suspended to probation, but with a requirement that Adams complete 365 days of work release through the local community corrections agency.<sup>1</sup> Adams, however, never appeared to begin his work release and did not appear for his initial appointment with his probation officer.

On December 28, 2007, and January 10, 2008, the State filed petitions to revoke Adams' probation. Adams was not located and arrested until June 24, 2008. After being brought into court, without counsel, and advised of his rights, and after speaking to the prosecutor, Adams admitted to the trial court that he violated his probation. The trial

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<sup>1</sup> Apparently, at about the same time as this guilty plea, Adams pled guilty to another Class D felony and received a sentence of one year, all suspended, in lower court cause number 30D01-0511-FD-2114. We have no information at all in the record before us regarding this offense. We will limit our discussion to lower court cause number 30D02-0612-FD-1806, to which the materials in the appendix relate.

court secured this admission after reminding Adams that he had a right to consult with an attorney. In way of mitigation, Adams attempted to explain that a child of his had been in the hospital in December 2007 for about three weeks. He also claimed that he thought his work release was going to be transferred to a different county. The trial court brushed aside these claims, revoked Adams' probation, and ordered him to serve the full amount of the previously suspended sentence. Adams now appeals.

## **Analysis**

### ***I. Propriety of Revocation***

Adams first argues that the trial court violated his Fifth Amendment right against self-incrimination by securing his admission to the probation violation without the presence or advice of counsel. As the State points out, however, the sole avenue for a defendant who has admitted or pled guilty to a probation violation to challenge a revocation of probation is through a post-conviction relief petition.<sup>2</sup> See Huffman v. State, 822 N.E.2d 656, 660 (Ind. Ct. App. 2005). Indiana Post-Conviction Rule 1(1)(a)(5) allows defendants to allege that his or her probation was “unlawfully revoked.”

Ordinarily, we might dismiss Adams' appeal for this reason. See id. However, Adams' argument that he was improperly sentenced following his admission to the probation violation presents a proper claim on direct appeal. Cf. Tumulty v. State, 666 N.E.2d 394, 396 (Ind. 1996) (holding that although defendant who has pled guilty cannot challenge propriety of plea on direct appeal, he or she can challenge a trial court's

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<sup>2</sup> Adams did not file a reply brief responding to the State's argument on this point.

discretionary sentencing following the plea). Thus, we now turn to that argument. Adams may challenge the revocation of his probation by filing a post-conviction relief petition, if he so chooses. See Huffman, 822 N.E.2d at 660.

## ***II. Sentencing***

Once a trial court has exercised its grace by ordering probation rather than incarceration, it has considerable leeway in deciding how to proceed in the event of a probation violation. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). “Accordingly, a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” Id. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court. Id. We do not review sentences following a probation revocation for appropriateness under Indiana Appellate Rule 7(B). Id.

We cannot say the trial court abused its discretion in ordering Adams to serve the full amount of the previously-suspended sentence. Here, a period of approximately six months passed between the time Adams was to report to his probation officer and begin the work release program and when he was finally located and arrested. Adams’ excuses for this failure were not convincing to the trial court. As for Adams’ sick child, his hospitalization for three weeks does not explain Adams’ six-month failure to report to work release or his probation officer. Additionally, Adams apparently was granted an extension to begin work release because of his child’s hospitalization, but still failed to report after that extension had expired. As for Adams’ claim that his probation and work

release were supposed to be transferred to a different county, the trial court noted that nothing in the original plea agreement in this case indicated that this transfer was to occur.

Adams also contends the trial court should have given more consideration to his assertion that he has three children to support who will be affected by his incarceration and subsequent inability to work. In the context of original sentencing, although hardship to dependents is a mitigating circumstance that trial courts may consider, they are not required to do so in the absence of special circumstances; the commission of a crime by one's parent and resulting incarceration is always a hardship. Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Here, Adams squandered the opportunity, agreed to by the State in the original plea agreement, to serve the first 365 days of his sentence on work release and the remainder on probation. It was within Adams' control to alleviate any hardship to his dependents that his criminal conduct might have caused, if he had simply complied with the work release and probation reporting requirements. Having failed to do so, it was within the trial court's discretion to order Adams to serve all of his previously-suspended sentence.

### **Conclusion**

Having admitted to violating probation, Adams cannot challenge the revocation of his probation in this direct appeal. The trial court's order requiring Adams to serve all of his previously-suspended sentence was not an abuse of discretion. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.