

STATEMENT OF THE CASE

Defendant-Appellant Jonathan Hankins appeals the reinstatement of his previously suspended sentence upon a finding that he violated his probation.

We affirm.

ISSUE

Hankins presents one issue for our review, which we restate as: whether the trial court abused its discretion when it ordered him to serve the entire previously suspended sentence.

FACTS AND PROCEDURAL HISTORY

In August 2006, Hankins pleaded guilty to theft, a Class D felony. He was sentenced to three years with 180 days executed and the balance suspended, and he was placed on probation for two years. In September 2006, Hankins began serving his two-year probationary term. Subsequently, in January 2007, a petition was filed alleging that Hankins violated his probation by being charged with domestic battery and by not paying his probation fees. In February 2007, a second petition was filed alleging that Hankins again violated his probation by being charged with theft and battery. A third petition was filed in September 2007, based upon a charge of auto theft. At the fact-finding hearing in June 2008, Hankins admitted to the allegations contained in the first two petitions for violation of probation, and the third petition was dismissed. At the hearing, Hankins introduced evidence that he has certain medical issues. The court revoked Hankins'

probation and ordered him to serve the balance of his previously suspended sentence. It is from the imposition of this suspended sentence that Hankins now appeals.

DISCUSSION AND DECISION

Hankins contends that the trial court abused its discretion by ordering him to serve the balance of his previously suspended sentence. Particularly, he argues that due to his health issues, the trial court should not have imposed the entire suspended portion of his sentence.

A defendant is not entitled to serve a sentence on probation; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a right. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). Further, probation is a criminal sanction in which a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. *Id.* Thus, we review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied.*

Once the court determines that the probationer has violated a condition, it has three options. The trial court may continue the person on probation, with or without modifying or enlarging the conditions; extend the person's probationary period for not more than one year beyond the original probationary period; or order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code §35-38-2-3(g).

Here, Hankins admitted to the allegations contained in two of the three petitions for violation of probation that were filed against him. At the fact-finding hearing, Hankins testified that in 1998 he was diagnosed with multiple sclerosis which has gotten progressively worse. He used a wheelchair at the fact-finding hearing and said that he had been using a wheelchair since 2007. Additionally, Hankins testified that he had suffered three strokes since 1998. He told the court that he has five children in the state but that he plans to move to Washington State to raise dogs. Hankins requested the court to give him “just two, three months at [the] Department of Correction” so that he can “get on with [his] life.” Tr. at 10.

Although Hankins has endured an increasing severity of the symptoms of his disease, he nevertheless has managed to amass a criminal history. Following his diagnosis in 1998 and his strokes in 1998 and 2001, he was charged with the theft charge underlying the instant case in 2005 and domestic battery in another case in 2007, which was the basis for the filing of his first petition for violation of probation. Following a stroke in 2007, Hankins was still able to accumulate charges of theft and battery, which were the basis for his second petition for violation of probation. While Hankins, by signing his probationary rules, agreed to accept conditions upon his behavior in lieu of imprisonment, his subsequent actions belied this agreement. His actions show a lack of respect for the law and for the opportunities afforded him. Therefore, we cannot say that the trial court abused its discretion in ordering Hankins to serve the entire previously suspended sentence.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the trial court did not abuse its discretion in ordering Hankins to serve the entire portion of his previously suspended sentence.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.