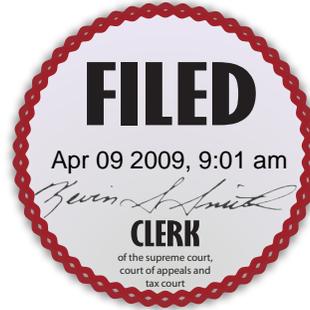


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

OTIS CARTER,)
)
Appellant-Defendant,)
)
vs.) No. 79A02-0809-CR-856
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-9106-CF-47

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Otis Carter appeals the trial court's order that he serve six previously-suspended years of his twenty year sentence for rape, a Class B felony, upon finding that he violated his probation. Carter raises one issue, which we restate as whether the trial court abused its discretion in imposing the six-year sentence. Concluding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

Carter pled guilty to rape, a Class B felony, and was sentenced to twenty years at the Indiana Department of Correction ("DOC") with six years suspended to probation. Terms of his probation included that he not commit another criminal offense, not possess any controlled substances, and that he "obtain appropriate rape counseling and rehabilitation" as requested by the probation department. Appellant's Appendix at 15. Carter began serving his sentence in early 1992.¹ Carter lost most of his good time credit while incarcerated due to "some major violations and he also committed another crime while in jail." Tr. at 15. He was not released to probation until sometime in 2004.

On October 26, 2007, and April 11, 2008, the probation department filed petitions to revoke Carter's probation, alleging that in December 2007, Carter committed the offense of possession of a controlled substance, failed to maintain quarterly registration on the sex offender registry, and failed to attend weekly sex offender treatment.² On May

¹ The trial court's sentencing order is dated March 16, 1991, appellant's app. at 16, and the parties referred to Carter beginning his sentence on March 16, 1991, at the revocation hearing, see transcript at 2-3, 13. However, the charge was not filed until June 17, 1991, alleging crimes committed on June 10, 1991. Id. at 6-7. The Chronological Case Summary confirms that sentencing was held on March 16, 1992. Appellant's App., CCS at 6.

² The actual petitions to revoke do not appear in the record. We base our statements on the discussion at the probation revocation hearing.

16, 2008, Carter admitted to the allegations of the State's petition to revoke his probation, specifically admitting that he had pled guilty to misdemeanor drug charges and that he used crack cocaine. The trial court accepted Carter's admission, revoked his probation, and ordered him to serve all of his previously-suspended six-year sentence.

Discussion and Decision

Carter contends that the order that he serve a six-year sentence for violating his probation is inappropriate pursuant to Indiana Appellate Rule 7(B). However, because probation is a matter of grace left to the trial court, independent appellate review of a sentence imposed in a probation revocation proceeding is not available. Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008) ("A trial court's action in a post-sentencing probation violation proceeding is not a criminal sentence as contemplated" by Rule 7(B)). Rather, we review a trial court's sentencing decision on revoking a defendant's probation for an abuse of discretion. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) ("Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed."). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id.

Carter contends that the trial court abused its discretion because he had no criminal history prior to his rape conviction, was only twenty years old at the time of his original sentencing, and had a good work record, all of which the trial court found as mitigating at his original sentencing. Carter also encourages us to consider that he has

already served “over eleven (11) years actual time on a twenty (20) year sentence.” Brief of Appellant at 11.

Based on the record, we cannot say the trial court abused its discretion. Upon finding a violation, the trial court had discretion to continue him on probation with the same or modified terms, extend his probation for up to one additional year, or order execution of the entire suspended sentence. Ind. Code § 35-38-2-3(g). All of the mitigating factors Carter points to were considered by the trial court in imposing the original sentence. To the extent Carter argues that his original extended stay at DOC somehow entitles him to a lesser sentence now, his argument is non-sensical. With good time credit, a defendant typically serves half of his executed sentence. See Ind. Code §§ 35-50-6-4 (“A person . . . who is imprisoned for a crime . . . is initially assigned to [credit] Class I.”); 35-50-6-2 (“A person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime”); see also Hildebrandt v. State, 770 N.E.2d 355, 360 (Ind. Ct. App. 2002) (“Class I classification qualifies an inmate for sentence reduction by one-half”), trans. denied. That Carter served more than half his expected sentence is his own fault. He lost good time credit while incarcerated because of his bad behavior, including apparently committing a crime.³ Upon being released to probation, Carter failed to abide by the rules of his probation and

³ The State introduced into evidence at the revocation hearing a Conduct Report from DOC, but the report was lost and is not part of the record before us. Appellant’s App. at 42 (affidavit of court reporter).

again broke the law. Such behavior demonstrates a lack of respect for the law and authority and certainly does not require further extension of the trial court's grace.

Conclusion

The trial court's order that Carter serve the entirety of his previously-suspended sentence was not an abuse of discretion.

Affirmed.

CRONE, J., and BROWN, J., concur.