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**IN THE
COURT OF APPEALS OF INDIANA**

GALE S. SHAWYER,)
)
Appellant-Respondent,)
)
vs.) No. 29A04-1007-CR-503
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE HAMILTON SUPERIOR COURT NO. 5
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0809-FD-5752

April 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Gale S. Shawyer (Shawyer), appeals the trial court's revocation of his probation.

We affirm.

ISSUE

Shawyer raises one issue for our review, which we restate as the following: Whether the trial court abused its discretion when it ordered him to serve the suspended portion of his sentence in the Indiana Department of Correction (DOC) after revoking his probation.

FACTS AND PROCEDURAL HISTORY

On August 28, 2008, the State filed an Information charging Shawyer with theft, a Class D felony, Ind. Code § 35-53-4-2(a), and check fraud, a Class D felony, I.C. § 35-43-5-12(b)(1)(A). On July 6, 2009, Shawyer pled guilty to theft, and on February 25, 2010, he was sentenced to three years in the DOC, with two years suspended and one year to be served in the Hamilton County Community Corrections work release program.

On March 25, 2010, Shawyer was released from the Indiana Men's Community Reentry Center and was to report to the Hamilton County Probation Department within three days of his release. However, Shawyer failed to do so and instead, he contacted the Hamilton County Probation Department and Community Corrections saying that he could not work because on March 28, 2010, he had fallen from a ladder and injured himself. The Director of Administration for Community Corrections responded by letter on March 31, 2010,

informing Shawyer that he had to report for intake on April 1, 2010 at 9:00 a.m. Shawyer did not report, and on April 12, Community Corrections filed a notice of non-compliance.

Between March and April, Shawyer also sent multiple letters to the trial court asking that his date to report to work release be delayed, first due to a family illness and then his injury. The trial court made entries in the chronological case summary denying Shawyer's requests to delay reporting and ordering him to report to Community Corrections immediately. Additionally, several of the entries state that Shawyer failed to show supporting documentation of his medical condition.

On April 20, 2010, the State filed a notice of a probation violation; specifically, that Shawyer violated condition 15 of his probation, which required him to "successfully complete any direct commitment through a community corrections program and serve the full term required." (Appellant's App. p. 92). On July 29, 2010, a probation revocation hearing was conducted. At the hearing, Shawyer admitted that he had violated the terms of his probation when he failed to report to the work release program; however, he argued that he was unable to work because of scheduled surgery for his injury. Shawyer also argued that he had informed Community Corrections and the trial court about the injury and impending surgery through letters he had submitted. The trial court took judicial notice of the letters and other documentation Shawyer sent to the court. At the conclusion of the hearing, the trial court revoked Shawyer's probation and ordered that he serve the initially suspended portion of his sentence in the DOC.

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

DISCUSSION AND DECISION

Shawyer argues that the trial court abused its discretion when it revoked his probation and ordered execution of his originally suspended sentence. While Shawyer does not dispute the fact that he failed to report to the work release program, he contends that the trial court should have taken into consideration his injury, which prevented him from working.

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.* Additionally, "probation is a favor granted by the State, not a right to which a criminal defendant is entitled." *Sanders v. State*, 825 N.E.2d 945-55 (Ind. Ct. App. 2005). As such, a violation of any condition of probation is sufficient to sustain a probation revocation. *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008).

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, at the probation revocation hearing, Shawyer testified that he did not report to work release because he was unable to work due to his injury. He also testified that he informed Community Corrections and sent letters to the trial court regarding his impending surgery. Despite Shawyer's argument that the trial court "clearly disregarded all efforts made by [Shawyer] to address the court's concern for his failure to report to Community Corrections," the trial court revoked his probation because it was clear that Shawyer could not abide by the terms of his probation—specifically, complete work release. (Appellant's Br. p. 5). As we have stated, placement on probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Johnson v. State*, 659 N.E.2d 194, 198 (Ind. Ct. App. 1995). The trial court showed Shawyer leniency when it allowed him to serve his sentence on work release. Because Shawyer has demonstrated that he is unable to abide by the terms of his probation, as he is unable to work, the trial court, in its discretion, can order him to serve his sentence in the DOC.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it ordered Shawyer to serve his suspended sentence after revoking his probation.

Affirmed.

DARDEN, J., and BARNES, J., concur.