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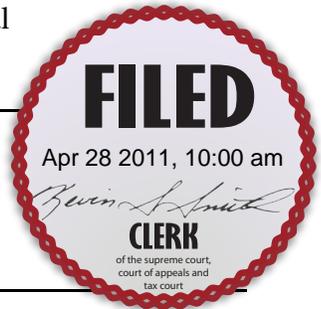
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**IN THE
COURT OF APPEALS OF INDIANA**



JONATHAN P. GRIDER, JR.,)

Appellant-Defendant,)

vs.)

No. 16A01-1011-CR-599)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE DECATUR SUPERIOR COURT
The Honorable Matthew D. Bailey, Judge
Cause No. 16D01-0902-FD-89

April 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jonathan P. Grider, Jr. appeals an order revoking probation and ordering him to serve the balance of his suspended sentence.

We affirm.

The facts favorable to revocation are that on May 18, 2009, Grider negotiated plea agreements in two separate matters. Under cause number 16D01-0902-FD-047, he pleaded guilty to battery as a class D felony. In the instant case, under cause number 16D01-0902-FD-089, he pleaded guilty to aiding escape and possession of methamphetamine as class D felonies. At the combined sentencing hearing, the parties agreed that with respect to the battery conviction, Grider would receive a three-year, executed sentence. With respect to the convictions under cause number 16D01-0902-FD-089, the parties agreed he would receive two-year sentences for each conviction, that the sentences would be served consecutively, and that the sentences would be suspended to probation. As a condition of probation, the trial court ordered that Grider “shall, within 60 days of [his] release from incarceration, enroll in and begin inpatient treatment at the residential treatment facility run by Certified Counseling Services in Louisville, Kentucky, in the 13 month program.” *Appellant’s Appendix* at 18. Grider was also required to submit to random drug screens. The trial court approved the agreement and sentenced Grider accordingly. After Grider served the sentence for the battery conviction, he began serving probation for the instant convictions on May 17, 2010. On August 2, 2010, the Decatur County Probation Department filed a petition alleging that Grider violated the conditions of his probation by testing positive for methamphetamine during a drug screen and by failing to commence the inpatient treatment program.

At the revocation hearing, Grider admitted that he failed the drug screen but explained

that he had not begun the treatment program because the cost was prohibitive and an anticipated source of revenue to fund that treatment had not panned out. Following the hearing, the trial court declined to find that Grider violated probation based on his failure to enter into a treatment program. The trial court did find, however, that Grider's failed drug screen constituted a violation of probation. Based upon this finding of probation violation, the trial court revoked Grider's suspended sentence and ordered that the remainder of the four-year sentence be executed.

Grider appeals the execution of his suspended sentence, contending: "[t]aking into account the minimal nature of the offense, the explanations for why the violation occurred, and the fiscal impact to the state in incarcerating Mr. Grider, the revocation of four years was an abuse of discretion." *Appellant's Brief* at 6. Grider specifically asks this court "to order a one year revocation followed by probation or to order less than four years be revoked." *Id.*

Generally, as long as the trial court follows the procedures outlined in Ind. Code Ann. § 35-38-2-3 (West, Westlaw through 2010 2nd Regular Sess.), it may properly order execution of a suspended sentence. *Abernathy v. State*, 852 N.E.2d 1016 (Ind. Ct. App. 2006). I.C. § 35-38-2-3(g) provides that upon finding a violation of probation, a trial court may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." *See also Stephens v. State*, 818 N.E.2d 936 (Ind. 2004). The decision to revoke probation is within the sound discretion of the trial court, and the trial court's decision is reviewed on appeal only for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008). After revoking probation, a trial court may execute all or part of the previously suspended sentence, subject to certain restrictions not applicable here. Our Supreme Court

has described the appellate review of sentences imposed for probation violation as follows:

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. 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. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) (internal citations omitted).

Less than three months after his release to probation, Grider failed to satisfy two of the primary conditions of his probation. He tested positive for methamphetamine and, although the trial court did not find it as a probation violation, Grider acknowledged that he failed to enter into a treatment program to address his admitted addiction to drugs. We understand that he explained his failure to seek treatment as a matter of practical impossibility – he could not afford the treatment. Indeed, perhaps this is the reason the trial court declined to find this as a violation of probation. We note, however, that Grider apparently did not attempt to communicate this problem to those who were monitoring his compliance. It seems that the first notice the State had of Grider's reason for failing to enroll in the treatment program came after a notice of probation violation had been filed. Moreover, it is not clear to us that Grider has satisfactorily explained how he will address this deficiency while on probation and while, at the same time, refraining from using illegal drugs.

By re-commencing the use of illegal drugs so soon after his release to probation, Grider demonstrated that he is unable or unwilling to control that behavior through force of

will. In other words, the prospect of Grider successfully completing probation under the present circumstances is not encouraging. Moreover, we are not convinced that executing only one year of the four-year suspended sentence will improve those prospects. In fact, it seems more likely that Grider can better address his addiction while incarcerated. Be that as it may, we conclude that the trial court did not abuse its discretion in executing the previously suspended four-year sentence.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.