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IN THE
COURT OF APPEALS OF INDIANA

THOMAS HUFFINE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1010-CR-1098
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0902-FC-28582

May 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Thomas Huffine appeals his sentence following the revocation of his probation. Huffine raises one issue which we revise and restate as whether the trial court erred in ordering him to serve 240 days of his previously suspended sentence. We affirm.

The relevant facts follow. On July 30, 2009, Huffine was sentenced to 545 days with 141 days executed and the remaining 404 days suspended to probation for strangulation as a class D felony.[1] He was also ordered to pay $1,004 in fees. The conditions of Huffine's probation included that he: (1) "report as directed to the Probation Department;" (2) "refrain from all use of alcohol and controlled substances and submit to drug and alcohol testing;" (3) "pay all Court ordered fees and restitution pursuant to the standing order of the Marion Superior Court;" and (4) attend twenty-six weeks of domestic violence counseling. Appellant's Appendix at 26.

On May 18, 2010, the probation department filed a nine-count notice of probation violation alleging that Huffine "failed to report to the drug lab . . . and failed to call the drug line" on six dates between February 20, 2010 and May 11, 2010, "failed to attend Court ordered Domestic Violence Counseling," "failed to make regular monthly payments towards his Court ordered financial obligation," and that he "failed to report to the Probation Department as directed." Id. at 27. The notice of violation noted that Huffine "attended an assessment on 11/04/2009 and was referred to 2nd Chance Counseling for 26 week [sic] of Domestic Violence Counseling," that he "had not made

[1] Huffine was also sentenced to 270 days suspended for domestic battery as a class A misdemeanor which was ordered to be served concurrent with the felony sentence. This court issued a memorandum decision reversing Huffine's domestic battery conviction based upon double jeopardy principles. Huffine v. State, No. 49A04-0908-CR-478, slip op. at 6 (Ind. Ct. App. March 5, 2010).

any contact . . . since 04/06/2010," and that he had not made payments towards his fines and fees. Id. at 28.

On September 13, 2010, the court held a probation violation hearing in which Huffine admitted to all nine of the allegations. Huffine offered explanations for some of the violations while complaining that his probation officer "treated [him] as if [he were] a common criminal." Transcript at 4. Huffine stated that he received a job offer as a bouncer at a sports bar but that his probation officer would not let him accept the job, and noted that "you would think [his probation officer] would at least accept that until [Huffine] could find something better so [he could] pay on [his] probation." Id. at 6. Huffine stated that he missed the drug tests because he kept "forgetting to call." Id. at 7. Regarding the domestic violence counseling, Huffine stated that the center told him that he "could not come unless [he] paid" and he did not have the money to do so. Id. at 8. The court revoked Huffine's probation and ordered him to serve 240 days of his previously suspended sentence in the Department of Correction.

Huffine challenges the reasonableness of the sentence imposed for his probation violation. Specifically, Huffine argues that in reviewing his sentence, we should apply the standard set forth in Ind. Appellate Rule 7(B) and "lower his sentence to 180 days[] as Probation had originally recommended . . . ." Appellant's Brief at 7. Ind. Appellate Rule 7(B) provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

However, this is not the correct standard to apply when reviewing a sentence imposed for a probation violation. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. Id. The trial court determines the conditions of probation and may revoke probation if the conditions are violated.[2] Id. (citing Ind. Code § 35-38-2-3; Goonen v. State, 705 N.E.2d 209 (Ind. Ct. App. 1999)). 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. Id. 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. Id. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Id. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id. As long as the proper procedures have been followed in conducting a probation revocation hearing, "the trial court may

[2] Ind. Code § 35-38-2-3(g) sets forth a trial court's sentencing options if the trial court finds a probation violation:

> If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:
>
> (1) Continue the person on probation, with or without modifying or enlarging the conditions.
>
> (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
>
> (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence." Goonen, 705 N.E.2d at 212.

Here, the court's order that Huffine serve 240 days of his previously suspended sentence was not an abuse of discretion. At the outset of the hearing, Huffine admitted to all nine of the allegations listed in the notice of probation violation submitted by the probation department. Six of the nine violations were for failing to submit to drug testing, and although Huffine explained that two of the missed tests were on Saturday and he was "told to call Monday through Friday," he also indicated that he did not have an explanation for the other four missed tests other than that he "forgot to call." Transcript at 8. Huffine admitted that he failed to report to the probation department as directed. Based upon these violations alone, the court was well within its discretion to partially revoke Huffine's probation and order that he serve 240 days executed. See Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008) (noting that a remedy under Ind. Appellate Rule 7(B) is not available on appeals from a probation revocation hearing); Milliner v. State, 890 N.E.2d 789, 793 (Ind. Ct. App. 2008) (noting that we do not review probation revocations under Ind. Appellate Rule 7(B) and that the court did not abuse its discretion in revoking the defendant's probation), trans. denied.

For the foregoing reasons, we affirm the trial court's reinstatement of 240 days of Huffine's previously suspended sentence.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.