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IN THE
COURT OF APPEALS OF INDIANA

MURIAL A. PITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A05-0811-CR-670
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0404-FC-1204

May 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Murial Pitt appeals the revocation of her probation. Pitt raises two issues, which we revise and restate as:

I. Whether the evidence is sufficient to revoke Pitt's probation; and

II. Whether the trial court abused its discretion by ordering Pitt to serve three years of her suspended sentence.

We affirm.

The relevant facts follow. On April 27, 2004, Pitt was charged with five counts of forgery as class C felonies. In September 2004, the trial court issued a warrant for Pitt because she failed to appear. On November 6, 2007, Pitt appeared in person in custody and was remanded to the custody of the Sheriff. On November 16, 2007, Pitt pled guilty as charged. As part of the plea agreement, Pitt was ordered to successfully complete an alcohol and drug program and be subject to random drug testing while on probation. The trial court sentenced Pitt to four years upon each count, ordered that the sentences be served concurrently, and ordered Pitt to serve 150 days in the Indiana Department of Correction with the remaining time suspended to probation.

In March 2008, the State filed a Petition and Notice to Revoke Probation alleging that Pitt failed to comply with the Alcohol and Drug Transfer Program and had missed three appointments. On September 11, 2008, the State filed an Amended Notice of Probation Violation alleging that Pitt submitted a drug screen that tested positive for cocaine. After a hearing, the trial court found that Pitt had violated the conditions of her probation by (1) failing a drug screen; and (2) failing to keep her appointments with the

alcohol and drug program. Accordingly, the trial court revoked Pitt's probation and ordered her to serve her three years in the Indiana Department of Correction. Specifically, the trial court stated, "I'm going to order three years of the sentence to be executed. And upon her successful completion of half of that time and a [sic] alcohol and drug treatment program in the DOC, I'll consider releasing her at that point." Transcript at 45.

I.

The first issue is whether the evidence is sufficient to revoke Pitt's probation. Probation is an alternative to commitment in the Department of Correction, and it is at the sole discretion of the trial court. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999), reh'g denied. A defendant is not entitled to serve a sentence in probation. Id. Rather, probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." Id. A revocation hearing is in the nature of a civil proceeding, so the alleged violation need be proven only by a preponderance of the evidence. Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992), cert. denied, 508 U.S. 922, 113 S. Ct. 2373 (1993). "We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses." Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995), reh'g denied. "If there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation, we will affirm its decision to revoke probation." Id.

Pitt concedes that she did not complete an alcohol and drug program but points out that "she did enroll in Stepping Stones and she did complete phase one which consisted of 3 times per week for 8 weeks." Appellant's Brief at 12. Pitt also argues that the trial court abused its discretion because "[i]t appears on the surface that the defendant was, for the most part, in full compliance with the rules of probation." Id.

The record reveals that, as part of the plea agreement, Pitt was ordered to successfully complete an alcohol and drug program and be subject to random drug testing while on probation. Pitt missed three appointments with the alcohol and drug program, did not complete the alcohol and drug program, and tested positive for cocaine. Given Pitt's violations, there was sufficient evidence to support the trial court's revocation of Pitt's probation. See Menifee v. State, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992) (affirming the trial court's revocation of defendant's probation and holding that any one of the violations warranted revocation), clarified on denial of reh'g, 605 N.E.2d 1207 (1993).

II.

The next issue is whether the trial court abused its discretion by ordering Pitt to serve three years of her suspended sentence.[1] Probation is a matter of grace left to trial

[1] Pitt cites Ind. Appellate Rule 7(B) and raises the issue of "[w]hether imposing a 3 year executed sentence is inappropriate in light of the nature of the offense and the character of the offender." Appellant's Brief at 1. This is not the correct standard to apply when reviewing a sentence imposed for a probation violation. See Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008) ("A trial court's action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. The review and revise remedy of App. R. 7(B) is not available."); Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007).

court discretion, not a right to which a criminal defendant is entitled. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Id. (citing Ind. Code Ann. § 35-38-2-3 (West 2007); 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.

Pitt appears to argue that the trial court abused its discretion because she was thirty years old at the time of the hearing and is a "youthful non-violent first offender." Appellant's Brief at 13. Pitt also points out that she met with her probation officer regularly, was "cooperative, well groomed, and well mannered," and started her alcohol and drug program. Id. at 14.

As previously mentioned, the record reveals that Pitt missed three appointments with the alcohol and drug program, did not complete the alcohol and drug program, and tested positive for cocaine. At the hearing, the trial court stated:

> Well, here's the bottom line – I mean, she was charged in '04, the Court released her on her own recognizance on the condition that she go to alcohol and drug and follow through with their recommendations. A

> revocation gets filed in '04, she doesn't show back up. So for three years there's a warrant out for her arrest because she hasn't complied with and gone to the alcohol and drug program. Her trial date passes, she gets arrested on it. She asked for a Speedy Jury Trial and we get a resolution. She gets a suspended sentence. She has an opportunity to help herself. And here we are again. Not only after that, after she pleads guilty she's got an explanation, she's still blaming others. And until she wants to take some responsibility for herself that it's not someone at an alcohol and drug treatment program place's fault. It's not the probation's fault. I mean, she's got to take responsibility. Here we are again, she's failed to take that opportunity. Here's what I'm going to do, I'm going to order three years of the sentence to be executed. And upon her successful completion of half of that time and a [sic] alcohol and drug treatment program in the DOC, I'll consider releasing her at that point. She can petition the Court. But she's got to do it on her own. She's not wanted to do it voluntarily. We're four years down the road and she has utterly failed to do it. I don't think I have any other option. So I'm going to execute three years of the four and upon her completion of half the sentence and a jail treatment program offered in the DOC I'll consider releasing her and terminate her sentence at that point.

Transcript at 45-46. Based upon the record, we cannot say that the trial court abused its discretion by ordering that Pitt serve three of the four years with the option to consider her release if she completes half of the three years and a treatment program while in the Department of Correction.

For the foregoing reasons, we affirm the revocation of Pitt's probation.

Affirmed.

CRONE, J. and BRADFORD, J. concur