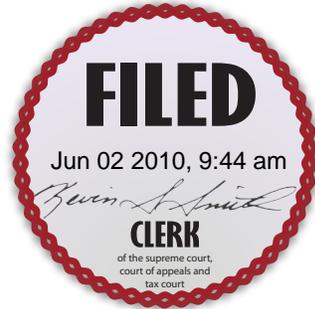


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GEORGE BLAIR,)

Appellant-Defendant,)

vs.)

No. 49A02-0911-CR-1069

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0802-FB-49286

June 2, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant George Blair appeals the revocation of his probation and the trial court's order that he serve the entire four-year sentence that was originally suspended. Specifically, Blair argues that the trial court abused its discretion in revoking his probation because "the evidence suggests [that he] may not have been responsible for his actions" during group psychosexual treatment meetings. Appellant's Br. p. 4. Finding no error, we affirm the judgment of the trial court.

FACTS

On April 24, 2008, Blair pleaded guilty to child molesting, a class C felony. The trial court subsequently sentenced Blair to a four-year suspended sentence and to probation. The conditions of Blair's probation included a requirement that he complete a sex offender treatment program.

On September 9, 2009, the State filed a notice of probation violation, alleging that Blair: 1) failed to comply with sex offender treatment; 2) viewed pornographic materials; 3) failed to abide by his curfew; 4) drank alcohol; 5) used a controlled substance; and 6) failed to maintain a single, verifiable address.

During a revocation hearing that was conducted on October 7, 2009, Stephen Swineheart, an Indianapolis Counseling Center therapist who supervised Blair's psychosexual treatment group, testified that Blair disrupted the group meetings. More particularly, Blair refused to be honest with the group and "was . . . continually coming up with what appeared to be one deception after another." Tr. p. 24. Swinehart also acknowledged that Blair's behavior negatively impacted the other group members.

Finally, Swineheart testified that Blair missed three group meetings in a twelve-month period, which exceeded the number that were allowed to be missed.

At the conclusion of the hearing, the trial court specifically found that Blair violated the terms of his probation by failing to comply with the court-ordered sex offender treatment program. As a result, the trial court ordered Blair to serve the entire four-year sentence that had been originally suspended. Blair now appeals.

DISCUSSION AND DECISION

In addressing Blair's contention, we initially observe that probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. Id.

A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a right. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). Upon finding that a probationer has violated a condition of probation, a trial court may either continue probation, with or without modifying or enlarging the conditions, extend probation for not more than one year beyond the original probationary period, or order all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g). It is within the trial court's discretion to determine and impose a sanction in accordance with this statute. Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007).

The decision whether to revoke probation is a matter within the sound discretion of the trial court. Brabandt, 797 N.E.2d at 860. The violation of a single condition of probation is generally sufficient to revoke probation. Id. On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. Cox, 706 N.E.2d at 551. If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

In this case, the evidence established that Blair was ordered to undergo sex offender treatment as a condition of his probation. Swineheart supervised Blair’s treatment at the Indianapolis Counseling Center, and during group meetings, Blair was “disruptive” and refused to be honest in the group setting. Tr. p. 24. Swineheart testified that time was taken away from other group members because he had to encourage Blair to be honest and “to do what he was supposed to do.” Id. Blair did not complete the treatment program and was discharged after missing “too many” group meetings. Id. at 26.

Although Blair suggests that Swineheart lacked the ability to counsel individuals with anxiety or drug and alcohol issues, the undisputed evidence shows that Blair disrupted the counseling sessions and was non-compliant with the court-ordered therapy. Id. at 23-25. Thus, the evidence established Blair’s unwillingness to comply with the court-ordered treatment. As a result, we conclude that the trial court properly revoked Blair’s probation. Moreover, because it was within the trial court’s discretion to determine and impose a sanction in accordance with Indiana Code section 35-38-2-3(g),

we cannot say that the trial court erred in ordering Blair to serve the originally-suspended sentence.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.