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IN THE
COURT OF APPEALS OF INDIANA

DUSTIN MESSER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0810-CR-633
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0609-FB-176709

June 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Dustin Messer appeals his sentence for violating his probation.

We affirm.

ISSUE

Whether the sentence imposed for a probation violation is an abuse of discretion.

FACTS

On or about September 18, 2006, the State charged Messer with two counts of class B felony neglect of a dependent.[1] On November 7, 2007, Messer pleaded guilty to class C felony neglect of a dependent pursuant to a plea agreement. The trial court sentenced him to four years, with two years executed and two years suspended to probation. Messer began his term of probation on June 6, 2008.

On August 13, 2008, the State charged Messer with operating a vehicle while intoxicated in a manner that endangered a person, a class A misdemeanor; and operating a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol, a class C misdemeanor. On September 10, 2008, the State filed a notice of probation violation.

The trial court held a probation revocation hearing on September 30, 2008. Messer admitted that he had served time in Morgan County for the operating while intoxicated charge and did not dispute his guilt. The trial court revoked Messer's probation and imposed an executed sentence of two years.

[1] Ind. Code § 35-46-1-4.

DECISION

Messer asserts that the imposition of a two-year sentence is inappropriate as "a driving offense is in no way indicative that [he] exhibited a tendency to repeat the offense of Neglect [o]f [a] Dependent[.]" Messer's Br. at 5. He argues that we should review his sentence under Indiana Appellate Rule 7(B).

Indiana Code section 35-38-2-3(g) provides as follows:

> If the court finds that the person has violated a condition [of probation] at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
>
> (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; or
> (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

"[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.'" *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006) (quoting *Strowmatt v. State*, 779 N.E.2d 971, 976 (Ind. Ct. App. 2002)).

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* Thus, in reviewing the imposition of a sentence for a probation violation, we do not apply the standard set forth in Indiana Appellate Rule 7(B). *See id.*

Only two months after beginning his term of probation, Messer violated his probation. His actions indicate a lack of respect for the law. We find no abuse of discretion in ordering him to serve his two-year suspended sentence pursuant to Indiana Code section 35-38-2-3(g).

Affirmed.

BAILEY, J., and ROBB, J., concur.