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IN THE
COURT OF APPEALS OF INDIANA

BRANDON LIVERS,	)	
	)	
Appellant-Respondet,	)	
	)	
vs.	)	No. 22A01-1011-CR-580
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan Orth, Judge
Cause No. 22D01-0702-FA-119

June 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Brandon Livers (Livers), appeals the trial court's revocation of his probation and imposition of the balance of his suspended sentence.

We affirm.

ISSUE

Livers raises one issue for our review, which we restate as the following: Whether the trial court abused its discretion when it revoked Livers' probation and imposed the balance of his suspended sentence.

FACTS AND PROCEDURAL HISTORY

On February 27, 2007, the State filed an Information charging Livers with dealing in cocaine, a Class A felony, Ind. Code § 35-48-4-1. On July 5, 2007, Livers entered into a plea agreement with the State, whereby he agreed to plead guilty to dealing in cocaine as a Class B felony and the State agreed to a sentence of fifteen years executed in the Department of Correction (DOC) with thirteen years suspended to probation. On November 1, 2007, the trial court sentenced Livers pursuant to the plea agreement.

On April 3, 2008, Livers was released from the DOC. Shortly thereafter, the probation department filed a notice of probation violation alleging that Livers violated the terms of his probation— specifically, that Livers failed to maintain good behavior; report to probation; work faithfully or pursue a course of study; undergo drug and alcohol counseling; notify probation of a change of address/employment; and pay fees. Based upon this notice, the State filed a petition to revoke Livers' suspended sentence on July 29, 2008. On

September 4, 2009, the probation department filed an amended notice of probation, adding that Livers had committed another criminal offense in Jefferson County, Kentucky. On April 7, 2010, the probation department filed a second amended notice of probation violation, adding that Livers committed yet another offense in Floyd County, Indiana. The State filed a second amended petition to revoke Livers' suspended sentence on April 19, 2010.

On May 19, 2010, Livers called a prospective drug buyer in order to sell $50 worth of crack cocaine. The buyer was actually a confidential informant for the New Albany Police Department. Livers and the confidential informant arranged to meet at a Dairy Queen in Floyd County. Livers and a passenger drove to the Dairy Queen and pulled into the parking lot. Then, Livers exited his vehicle and sold three cellophane bags containing a white substance to the confidential informant for $50. After the sale, Livers returned to his vehicle and drove away.

After the buy, the confidential informant met with New Albany Patrolman Chris Ferrell (Officer Ferrell) at another location and showed Officer Ferrell the three bags. At that point, Officer Ferrell notified another officer to initiate a traffic stop. However, Livers did not stop and a pursuit ensued into Louisville, Kentucky. Livers' vehicle was eventually found abandoned with the driver and passenger doors open and the engine still running. On September 13, 2010, Livers was apprehended and he admitted to the drug transaction, but stated that he had sold the confidential informant fake crack cocaine, which was comprised of drywall and a wet napkin. He also admitted to fleeing law enforcement across state lines.

Based on the drug buy, on June 16, 2010, the probation department filed a third notice of probation violation alleging that in addition to the other violations, Livers committed a third criminal offense. On June 22, 2010, the State filed a third amended petition to revoke probation. On October 26, 2010, the trial court held a hearing on the State's petition. The trial court noted that Livers was not a good candidate for probation and at the end of the hearing, revoked Livers' probation and imposed his thirteen-year suspended sentence.

Livers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Livers argues that the trial court abused its discretion when it revoked his probation. Specifically, Livers claims that he was four months into his probation, and because the trial court "conceded that [Livers] is a bright, young man and not without hope of reformation" the trial court's revocation is excessive. (Appellant's Br. p. 5).

A trial court's sentencing decisions for violations of probation are reviewed for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion has occurred when a trial court's decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 889 N.E.2d 836, 839 (Ind. Ct. App. 2008). In determining whether the trial court abused its discretion, we do not reweigh evidence, and this court considers conflicting evidence in a light most favorable to the trial court's ruling. *Id*. Additionally, "probation is a favor granted by the State, not a right to which a criminal defendant is entitled." *Sanders v. State*, 825 N.E.2d 945-55 (Ind. Ct. App. 2005). As such, a

violation of any condition of probation is sufficient to sustain a probation revocation. *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008).

When a trial court finds a person has violated a condition of probation and the petition to revoke is filed within the term of probation, the trial court may continue the person on probation, extend the term of probation, or order execution of all or part of the original suspended sentence. I.C. § 35-38-2-3(g).

Here, the trial court did not abuse its discretion when it imposed Livers' suspended sentence because it is clear that he is not a good candidate for probation. During the probation revocation hearing, Livers' probation officer, Mary Wright (Wright), testified that Livers' performance on probation had been "very poor[]." (Transcript p. 8). When asked whether Livers should continue on probation, she stated that she did not think it was a suitable option. In fact, even Livers' attorney conceded that Livers is not "the best probationer in the history of Floyd County." (Tr. p. 25).

Among other things, the terms of Livers' probation required him to refrain from committing additional criminal offenses. Instead of abiding by this term, Livers committed not one, but three additional criminal offenses, one of which was participating in a drug buy and then leading the police on a car chase that ended across state lines. Moreover, Livers was on probation based on a prior conviction for dealing in cocaine.

In addition to violating his probation by committing new criminal offenses, Livers failed to abide by the other terms of his probation, including failure to maintain good

behavior; report to probation; work faithfully or pursue a course of study; undergo drug and alcohol counseling; notify probation of a change of address/employment; and pay fees. The trial court took note of that fact when it stated that Livers is unable to "comply with even the simplest things asked of [him], such as reporting, notifying of change of address and drug counseling. And when [he was] given a tremendous break the first time, [he was] arrested again for a drug charge." (Tr. pp. 28-29). Merely because the trial court said that Livers is "bright" does not mean that the trial court should ignore his numerous probation violations and criminal behavior. To the contrary, the trial court's comment indicates that Livers should know the consequence of his actions. As we have stated, placement on probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Johnson v. State*, 659 N.E.2d 194, 198 (Ind. Ct. App. 1995). Livers is clearly unable to abide by the terms of his probation, and as such, the trial court was well within its discretion when it imposed his suspended sentence.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it revoked Livers' probation and imposed the balance of his suspended sentence.

Affirmed.

DARDEN, J., and BARNES, J., concur.