

Joseph Craig Cassel appeals the trial court's revocation of his probation and imposition of six years of his previously-suspended sentence. He raises one issue on appeal, which we restate as follows: whether the trial court abused its discretion by ordering Cassel to serve six years of his previously-suspended eight-year sentence despite his efforts to comply with the terms of his probation by making payments towards his child support obligation.

We affirm.

FACTS AND PROCEDURAL HISTORY

Cassel is twenty-nine years old and the father of three children. On August 30, 2005, the State charged Cassel with non-support of a dependent in an amount greater than \$15,000.00¹ as a Class C felony. On December 1, 2005, Cassel pleaded guilty as charged, and pursuant to the plea agreement, the trial court sentenced him to an eight-year suspended sentence. At the time of his sentencing hearing, his child support arrearage was \$16,758.00. As a condition of his probation, Cassel was required to make weekly child support payments, reimburse the Noble County Supplemental Public Defender Services Fund in the amount \$200.00, and pay his court costs.

Between February 2006 and October 2008, Cassel held numerous jobs for short periods of time. During 2006, he was employed by Sun Valley in Elkhart, Indiana. Between December 2006 and March or April 2007, he was employed by Pilgrim in Middlebury, Indiana. After being laid off, he found a job at Rinker Boat in Syracuse, Indiana and worked there until June 2007. When Rinker's work slowed down, Cassel

¹ See Ind. Code § 35-46-1-5(a).

returned to Pilgrim for approximately one month and then was laid off again. Next, he found a position at Middlebury Hardwood, but was forced to resign because he was experiencing problems with his back.

On August 24, 2007, the State filed a violation of probation, alleging that Cassel failed to make child support payments and failed to reimburse the Noble County Supplemental Public Defender Services Fund. On that date, his arrearage was \$21,153.73. At the time the violation was filed, Cassel was working at Fenner Plumbing. Due to his probation violation, he lost that position. He found work again at High Line Enterprises, but was laid off after approximately a week. Cassel next worked at Forest River in Goshen, Indiana, but was let go from that position in April or May 2008 and then began receiving unemployment benefits. Money from these benefits was used to make child support payments. In September 2008, Cassel found another job but was subsequently dismissed because he lacked transportation.

On August 21, 2008, Cassel admitted to the violations. On October 2, 2008, at the disposition hearing, Cassel's arrearage had grown to \$24,358.63. The trial court noted that some payments had been made through wage withholding and tax returns being intercepted, but that Cassel had continued to disregard his obligations. The trial court ordered that Cassel serve six years of his previously-suspended eight-year sentence. Cassel now appeals.

DISCUSSION AND DECISION

Cassel argues that the trial court abused its discretion by ordering him to serve six years of his previously-suspended eight-year sentence when the evidence showed that he

made efforts to pay his support, even if these payments were low or irregular. There is no right to probation, and a trial court has “discretion whether to grant it, under what conditions, and whether to revoke it if conditions are violated.” *Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007).

We review a trial court’s decision to revoke probation and a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Davis v. State*, 892 N.E.2d 156, 162 (Ind. Ct. App. 2008). Indiana Code section 35-38-2-3(g) provides that, when a trial court finds that a person has violated a condition of probation, it 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 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.

Here, Cassel voluntarily admitted that he violated the conditions of his probation by failing to pay the proper amount on his child support arrearage and failing to pay his public defender fees. Therefore, he may only challenge the sentence imposed by the trial court and not the revocation of his probation. *See Huffman v. State*, 822 N.E.2d 656, 658 (Ind. Ct. App. 2005) (finding that defendant could only challenge her guilty plea during probation revocation through petition for post-conviction relief). After Cassel admitted

the probation violations, the trial court ordered him to serve six years of his previously-suspended eight-year sentence.

At the disposition hearing, Cassel presented evidence about his work history that he claims demonstrated that he was willing and able to work to pay down his child support obligation. In sum, he testified that between February 2006 and October 2008, he held approximately eight positions and received unemployment benefits when he was unemployed. Despite this history of employment, Cassel admitted that he was not always able to make full support payments as he sometimes earned only nine or ten dollars per hour or because he was not receiving his unemployment benefits as he should have been. Also, evidence was presented that most payments were made through garnishment of his wages.

At the time that Cassel originally pleaded guilty to non-support of a dependant in December 2005, his child support arrearage was \$16,758.00. At the time of sentencing on his guilty plea, the trial court informed Cassel that if he failed to pay his support he would spend the rest of the sentence in the Department of Correction. *Tr.* at 30. When the State filed the violation of probation against Cassel, his arrearage had grown to \$21,153.73, and when he pleaded guilty to the violation of the terms of his probation less than three years after his original sentencing, his arrearage had increased to \$24,358.63. Not only had Cassel failed to make any payment on the substantial arrearage, he failed to pay his current support. We conclude that an increase of nearly fifty percent in Cassel's child support arrearage in less than three years is more than adequate justification for the trial court's decision to revoke Cassel's probation and sentence him to serve six years of

the eight-year suspended sentence. The trial court did not abuse its discretion when it ordered Cassel to serve a portion of his previously-suspended sentence.²

Affirmed.

MATHIAS, J., concurs.

RILEY, J., dissents with separate opinion.

² Cassel also argues “[i]t is illogical to sentence Cassel to a term of imprisonment that will ensure . . . [no] support payments for several years because some payments, regardless of their frequency or amount, are more helpful than no payments.” *Appellant’s Br.* at 6-7. Cassel’s ex-wife and mother of his three children testified that “there has been a consistent pattern that whenever he’s had a court date, [] all of [a] sudden payments start coming in.” *Tr.* at 48. Although she realized that he would not make support payments while incarcerated, she still encouraged the trial court to give him an executed sentence.

**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH CRAIG CASSEL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 57A03-0811-CR-555
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

RILEY, Judge, dissenting with separate opinion.

I respectfully dissent from the majority’s decision to affirm the trial court’s revocation of Cassel’s probation.

As acknowledged by the majority, Cassel presented evidence of a lengthy employment history with positions earning him only nine or ten dollars per hour, combined with a receipt of unemployment benefits in times when he was unable to find a job. However, the majority ignores the State’s concession that “the support paid [by Cassel] has not been zero in any of these years.” (Transcript p. 66). In fact, the State specified that Cassel paid \$3,900.00 towards his child support arrearage in 2003; \$8,291.00 in 2006; and \$4,569.37 in 2008. As such, the State, recognizing that Cassel made at least some efforts towards paying his arrearage, suggested that the trial court

sentence him to “at least two years of [the] suspended sentence and that following the executed portion that he be continued on probation[.]” (Tr. p. 68).

In addition, the record reflects that during the hearing, Cassel’s ex-wife and mother of his three children testified that “there has been a consistent pattern that whenever he’s had a court date, [] all of sudden payments start coming in.” (Tr. p. 48). Although she realized that he would not make support payments while incarcerated, she still encouraged the trial court to give him an executed sentence.

While I appreciate Cassel’s ex-wife’s sentiment, I find it “illogical to sentence Cassel to a term of imprisonment that will ensure . . .[no] support payments for several years because some payments, regardless of their frequency or amount, are more helpful than no payments.” (Appellant’s br. pp. 6-7). However, I do find that in light of Cassel’s large support arrearage, some executed time is appropriate. Thus, based on Cassel’s employment history and the fact that he did not shirk from his responsibility by paying no support whatsoever, I believe that an executed sentence of two years, as initially proposed by the State, is more appropriate, followed by probation for the remainder of his sentence.