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ATTORNEY FOR APPELLANT:

JASON A. CHILDERS
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER JACKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0810-CR-607
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0509-FC-280

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Christopher Jackson appeals the imposition of a thirty-month sentence following the revocation of his probation. Specifically, he contends that the trial court erred by sentencing him to thirty months of his previously suspended forty-two month sentence because it is disproportionate to the minor nature of his probation violations. Finding no abuse of discretion, we affirm.

Facts and Procedural History

In 2007, Jackson pled guilty to five crimes and was sentenced to seven years, with three and one-half years suspended to probation.[1] On September 7, 2008, Orestes Town Marshal Craig Bousman went to Jackson's residence in response to a report of a stolen vehicle made by Jackson's girlfriend, Crystalyn Covington. Covington told Marshal Bousman that Jackson had been out drinking with her brother and an unidentified third party. Covington told Marshal Bousman that when the three men returned home she awoke to the sound of her truck being stolen by the unidentified man. Jackson confirmed the story and admitted to drinking.

While Marshal Bousman was at Jackson's residence, the stolen truck was located in Alexandria. Marshal Bousman took Jackson and Covington in his vehicle to the location of the stolen truck. Alexandria Police Officer Kyle Williams was waiting for Marshal Bousman at the scene and noticed a "one-hitter" marijuana pipe in the front seat of the truck.

[1] Jackson pled guilty to Class C felony escape, Class A misdemeanor resisting law enforcement, Class A misdemeanor possession of marijuana, Class D felony possession of a controlled substance, and Class C misdemeanor operating a vehicle with a BAC of .08 or more. Appellant's App. p. 6.

Upon arriving at the stolen truck, Covington saw the man she suspected of stealing the truck. The officers questioned the man, and as they walked away from the suspect they noticed that Jackson was no longer at Marshal Bousman's vehicle but instead was standing inside the open driver's side door of the truck. The officers approached the truck and noticed that Jackson was attempting to hide a marijuana pipe under his foot. Officer Williams noticed that Jackson smelled of alcohol. The officers questioned Jackson about why he removed the marijuana pipe from the truck. Jackson replied that he did not want to get in trouble for it. Jackson was then placed under arrest.

These actions led Jackson's probation officer to file a notice of violation of probation. The petition alleged that Jackson violated the conditions of his probation by committing the new criminal offenses of possession of paraphernalia, public intoxication, and taking substantial steps toward committing the criminal offense of obstruction of justice. Appellant's App. p. 41. The petition further alleged that Jackson violated the conditions of his probation by failing to pay probation fees and by failing to abstain from the use of alcoholic beverages. *Id.*

After an evidentiary hearing, the trial court determined that Jackson violated the conditions of his probation by failing to pay probation fees and by committing the new criminal offenses of 1) possession of paraphernalia; 2) public intoxication, a Class B misdemeanor; and 3) taking substantial steps toward committing the criminal offense of obstruction of justice. *Id*. at 16. Jackson now appeals.

Discussion and Decision

Jackson contends that the trial court erred by sentencing him to thirty months of his previously suspended forty-two month sentence for violating his probation because "it is disproportionate to the minor nature of the probation violations." Appellant's Br. p. 5. "Probation is a matter of grace left to trial 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.* The trial court's sentencing decision for a probation violation is reviewable under 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.* Upon the revocation of probation, the trial 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.

Ind. Code § 35-38-2-3(g).

Jackson admits to violating his probation by failing to pay $140.00 of probation fees, consuming alcohol, and committing new criminal offenses. However, he contends that these actions constitute minor violations of his probation. Jackson seeks to minimize his actions of possessing paraphernalia, taking a substantial step toward the crime of obstruction of justice, and being publicly intoxicated. He argues that no evidence was presented that he was in possession of marijuana or that he had used the marijuana pipe.

Further, Jackson offers that he is gainfully employed, attending relapse prevention classes, and providing clean drug screens.

However, the record reveals that Jackson committed these criminal offenses within nine months of his release from incarceration and only six months after being placed in a community transition program. Tr. p. 44. In addition, Jackson realized the seriousness of his actions because he attempted to hide the marijuana pipe. The bottom line is that Jackson did not adhere to the conditions of his probation but instead quickly resorted to behavior strikingly similar to the crimes that resulted in his original sentence. Considering the number and severity of the new criminal offenses and the temporal proximity to his release from incarceration, the trial court did not abuse its discretion in sentencing Jackson to thirty months of his previously suspended forty-two month sentence.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.