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IN THE
COURT OF APPEALS OF INDIANA

ALEX D. RUSSELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1011-CR-581
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0905-FC-55

July 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Alex D. Russell appeals the revocation of his probation and the imposition of the entire suspended sentence. Specifically, Russell's sole contention is that despite the trial court's broad discretion in revocation matters, it erred by neither considering relevant mitigating and aggravating factors, nor providing an explanation for imposing the entire eighteen-month suspended sentence. Finding no error, we affirm.

FACTS

On May 19, 2009, Russell was charged with attempted burglary, a class C felony. On September 15, 2009, Russell entered into a stipulated plea agreement in which he agreed to plead guilty to attempted theft, a class D felony. In exchange, the State dismissed the charge for attempted burglary. On October 28, 2009, Russell was sentenced to eighteen-months in the Indiana Department of Correction. The sentence was suspended and Russell was placed on probation.

On November 18, 2009, Russell was arrested, while on probation, for committing robbery, a class B felony. On December 18, the State filed a petition to revoke Russell's probation for violating the conditions of the plea agreement. Specifically, the State alleged that; Russell was engaged in criminal activity when he was arrested for robbery, failed to continue his education, and failed to show proof of employment.

On October 13, 2010, a hearing was held on the petition to revoke probation during which Russell admitted to violating the terms of his probation. The trial court revoked Russell's probation and imposed his entire eighteen-month suspended sentence to be served in the Indiana Department of Correction. Russell now appeals.

DISCUSSION AND DECISION

Russell acknowledges the wide latitude of discretion that the trial court has in probation revocation matters. Nevertheless, Russell argues on appeal that the trial court should have identified aggravating and mitigating factors and explained its reasoning for imposing the entire suspended sentence.

It is well established that a trial court's sentencing decision in a probation revocation hearing is reviewed for an abuse of discretion. Anders v. State, 825 N.E.2d 952, 954-955 (Ind. Ct. App. 2005). When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. Terrell v. State, 886 N.E.2d 98, 103 (Ind. Ct. App. 2008) (citing Piper v. State, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002)). There is no right to probation, and the decision to grant probation is within the discretion of the trial court. Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008).

Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation actually occurred. Terrell, 886 N.E.2d at 104. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Id. at 104-05. Where, as here, a probationer admits to the violations, an evidentiary hearing is not necessary. Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). Instead, the trial court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. Id.

A trial court's authority in reference to violations of probation is governed by Indiana Code Section 35-38-2-3(g)(1-3) which states:

> If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:
>
> (1) Continue the person on probation, with or without modifying or enlarging the conditions.
>
> (2) Extend the persons probationary period for not more than one (1) year beyond the original probationary period.
>
> (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

As noted above, a trial court is not required to identify aggravating and mitigating factors before revoking probation and ordering the defendant to serve his suspended sentence. Even so, the trial court provided Russell with an opportunity to explain his actions and offer any mitigating circumstance for why he committed a similar crime. Tr. p. 9-11. Russell offered no explanation, and admitted to the violation. Also, contrary to Russell's claim, the trial court was not required to state its rationale for revoking Russell's probation in writing. Terrell, 886 N.E.2d at 101.

Finally, there is no basis in the record to support Russell's contention that the trial court "may have mistakenly believed that it had no alternative but to impose the entire suspended sentence." Appellant's Br. p. 5. As a result, we conclude that the trial court

did not abuse its discretion in sentencing Russell to the originally suspended term of incarceration following the revocation of probation.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.