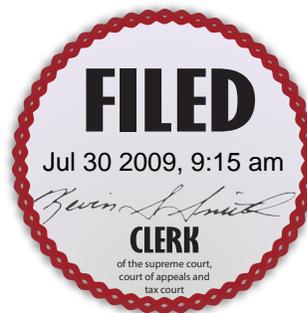


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JOHN A. KESLER II
Terre Haute, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TERRY BUCHANAN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 84A01-0903-CR-129

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0702-FB-0511

July 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Terry Buchanan (“Buchanan”) appeals from the decision of the Vigo Superior Court revoking his probation and the imposing of the remainder of his previously suspended sentence. Finding that the trial court did not abuse its discretion in ordering him to serve the remainder of his suspended sentence, we affirm.

Facts and Procedural History

In 2008, Buchanan pleaded guilty to Class D felony maintaining a common nuisance and Class D felony possession of methamphetamine. He was sentenced to concurrent terms of three years. The trial court ordered Buchanan to serve his sentence in a work release program under the supervision of the Vigo County Community Corrections program.

On September 25, 2008, Buchanan left the work release facility at 2:00 p.m. to go to work and was scheduled to return at 2:30 a.m. on September 26, 2008. However, Buchanan failed to return to the work release facility until 1:30 p.m. on September 26, 2008. In addition to returning eleven hours late, Buchanan also failed a drug screen upon his return to the work release facility.

On September 30, 2008, the State filed a petition to revoke Buchanan’s work release placement. On December 8, 2008, the trial court found that Buchanan had violated the terms of his work release placement. The trial court then revoked Buchanan’s placement and ordered him to serve the remainder of his sentence in the Department of Correction.

Discussion and Decision

Buchanan argues that the trial court abused its discretion when it ordered him to serve the remainder of his sentence in the Department of Correction. For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. Brooks v. State, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998). A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a “matter of grace” and a “conditional liberty that is a favor, not a right.” Million v. State, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995) (quoting Gilfillen v. State, 582 N.E.2d 821, 824 (Ind. 1991)).

The sentencing of a defendant following a community corrections violation is governed by statute. If an individual has violated a condition of probation at any time before the termination of the probationary period, the trial court may order execution of the sentence that was suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(g)(3) (2004 & Supp. 2007).

“Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). A trial court’s sentencing decision following a probation revocation is reviewed for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion will be found “where the decision is clearly against the logic and effect of the facts and circumstances.” Prewitt, 878 N.E.2d at 188. We will consider the evidence most

favorable to the trial court's decision and will not reweigh the evidence or judge witnesses' credibility. Sanders, 825 N.E.2d at 945-55.

Buchanan concedes that he violated the terms of the work release program when he returned eleven hours late and failed a drug screen. Appellant's App. p. 10. Under Indiana Code section 35-38-2-3(g)(3), the trial court's decision to order execution of the remainder of Buchanan's sentence is well within its discretion. We therefore conclude that the trial court acted within its discretion in ordering Buchanan to execute the suspended portion of his sentence. Buchanan's argument is essentially a request that we reweigh the evidence, which we will not do.

Affirmed.

RILEY, J., and KIRSCH, J., concur.