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.

FILED
Aug 03 2010, 9:33 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

DAVID W. STONE IV
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JOHN W. SAWYER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1001-CR-129
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Rudolph R. Pyle, Judge
Cause Nos. 48C01-0306-FC-168 and 48C01-0212-FC-362

August 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John W. Sawyer appeals the revocation of his probation, raising the following restated issues:

I. Whether the trial court abused its discretion in revoking Sawyer's probation and ordering the remainder of his sentences to be served in full; and

II. Whether the trial court erred in determining Sawyer's credit time.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2005, Sawyer was convicted of operating a vehicle after forfeiture of license for life and operating a vehicle with a Blood Alcohol Content of .08 or more. For each conviction he was sentenced to two years of in-home detention and six years of probation. The court ordered the sentences to run consecutively for a total of four years of in-home detention and twelve years of probation.

Sawyer failed to complete the intake process for in-home detention as required and was arrested in for his failure to do so. Sawyer was released to a group home and, during the next three years, repeatedly violated his probation, was arrested, sanctioned, and released. During this period, he was also hospitalized for some time.

On October 24, 2009, while in a group home, Sawyer was highly intoxicated and had a violent encounter with a woman, causing her various injuries. Sawyer was arrested and charged with several crimes. On October 27, 2009, the probation department filed a petition to revoke Sawyer's probation for his commission of the criminal offenses. On January 4, 2010, the trial court found that Sawyer had violated his probation by committing these new offenses and ordered him to serve the balance of his

suspended sentences, the two six-year probation terms, in the Department of Correction. The trial court granted him sixty-nine days of credit for his time spent confined awaiting his revocation hearing. . The trial court made no comments regarding credit time for any previous confinement, nor did the defense raise the issue to the court. Sawyer now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Sawyer contends that the trial court abused its discretion when it revoked his probation and ordered him to serve the remainder of his sentence in the Department of Correction. Specifically, he contends that the trial court was punishing him for abusing alcohol.

Decisions to revoke probation are reviewed for an abuse of discretion. *Brattain v. State*, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Id.* As we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Strowmatt v. State*, 779 N.E.2d 971, 976 (Ind.Ct.App.2002); *Davis v. State*, 743 N.E.2d 793, 794 (Ind.Ct.App.2001), *trans. denied.*

Although alcohol may have been a contributing factor to his behavior, Sawyer's probation was revoked because he repeatedly violated the conditions of his probation culminating in the commission of violent crimes, not because he is an alcoholic. The

revocation of his probation did not go against the "logic and effect of the facts and circumstances" before the court. *Brattain*, 777 N.E.2d at 776. The trial court did not abuse its discretion in revoking his probation and ordering him to serve the remainder of his sentences in full.

II. Credit Time

Sawyer also contends that the trial court erred in determining that he is entitled to sixty-nine days of credit against the balance of his sentence ordered to be served by the trial court. The State argues that the record is insufficient to show that Sawyer actually served and is entitled to credit for the days he claims.

"It is appellant's duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived." *Brattain* 777 N.E.2d at 776 (quoting *Thomson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002)). A defendant may waive a claim to credit for time served by failing to present us with sufficient information to determine the issue. *Id.* The record before us lacks documentation showing the dates of the time actually served or the purpose of such incarceration.[1] The only items in the record available for use in evaluating Sawyer's claim are the CCS, which include dates that warrants were "read and served," and various release dates. *Appellant's App.* at 1, 3-6, 8-12. Sawyer was in and out of custody for numerous probation violations, but the date of each confinement, the reason for each confinement, and the amount of credit time

[1] An example of the lack of clarity in the record is found in the CCS entries for the original two sentences. Both entries set out the two year executed sentences on home detention followed by six year sentences suspended to probation, and both entries provide that the sentences shall "run consecutive with" [sic] the other sentence, but neither says which sentence shall be primary, and which shall run consecutively to it.

granted for each is unclear from the record. The following are particularly unclear: 1) whether Sawyer received credit for his time in the hospital; 2) how much, if any, of his four-year in-home detention sentence was completed; and 3) whether any credit time had already been applied to the in-home detention portion of Sawyer's sentence. The State argues, and we agree, that the lack of a sufficient record is the direct result of Sawyer's failure to raise the issue of credit time to the trial court during the revocation hearing. If Sawyer had done so, documentation would have been provided and the record would not be so inconclusive.[2]

Sawyer has failed to present a sufficient record relating to his claim for credit time, and, accordingly, his claim is waived.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

[2] Another example of the lack of clarity in the record is found in the CCS entries for April 4, 2007, the trial court stated, "the balance of the executed portion of the defendant's *sentence* is a total of 62 days to be served at the Madison County Detention Center." *Appellant's App.* at 4-5, 11 (emphasis added). It is unclear from the record before us what "sentence" the trial court was referring to since the identical entry appears in the CCS for both of convictions.