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IN THE COURT OF APPEALS OF INDIANA

ZACHARY WOLFE,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 48A02-1011-CR-1284
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle III, Judge
Cause No. 48C01-0601-FB-9

August 19, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Zachary Wolfe ("Wolfe") appeals following the Madison Circuit Court's revocation of his probation and raises the following two issues:

I. Whether certain conditions of his probation were constitutionally valid; and

II. Whether the trial court abused its discretion in ordering him to serve his previously suspended sentence.

Concluding that Wolfe has waived appellate review of the validity of the conditions of his probation and that the trial court did not abuse its discretion in ordering Wolfe to serve his previously suspended sentence, we affirm.

Facts and Procedural History

On July 13, 2006, Wolfe pleaded guilty to Class B felony rape. The trial court sentenced Wolfe to fifteen years with five years suspended to probation. On June 11, 2010, Wolfe was released to probation subject to the conditions applicable to probationers generally, as well as several special conditions applicable to adult sex offenders. Among these special conditions were the following requirements:

> 9. You shall notify your probation officer of your establishment of a dating, intimate, and/or sexual relationship. You shall notify any person with whom you are engaged in a dating, intimate, or sexual relationship of your sex-related conviction(s). You shall not engage in a dating, intimate, or sexual relationship with any person who has children under the age of 18 years.
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> * * *
>
> 13. You shall not be present at specific locations where children are known to congregate including, but not limited to, parks, schools, playgrounds and day care centers.

Appellant's App. pp. 15-16.

In June 2010, Wolfe began a sexual relationship with Angela Chapin ("Chapin"), who is the mother of three children under the age of five. Wolfe did not report the relationship to the Probation Department. On August 17, 2010, Wolfe accompanied Chapin and her children on an outing to Falls Park in Pendleton, Indiana.

On September 5, 2010, the Probation Department filed a notice of probation violation alleging that Wolfe had committed three probation violations. Specifically, the notice alleged that on June 28, 2010, Wolfe violated his curfew by staying overnight at Chapin's residence. The notice also alleged that that Chapin had violated the special conditions of his probation by failing to notify the probation department of his relationship with Chapin and by being present in a park.

At a hearing held on October 25, 2010, Wolfe admitted to violating his probation by failing to abide by his curfew, and he also admitted that he had accompanied Chapin and her children to Falls Park. At the conclusion of the hearing, the trial court found that Wolfe had committed all three of the alleged probation violations. The trial court revoked Wolfe's probation and ordered him to serve his previously suspended five-year sentence in the Department of Correction. Wolfe now appeals.

I. Validity of Conditions

Wolfe first argues that his violation of the above-referenced special conditions of his probation cannot form the basis of a valid revocation because these conditions are unconstitutionally vague and not reasonably related to his rehabilitation or the protection of public safety. Wolfe has waived this argument. Wolfe did not object to the conditions

at the time they were imposed, nor did he object to them at his probation revocation hearing. Because Wolfe failed to raise any argument regarding the validity of the special conditions prior to this appeal, he has waived appellate review of these arguments. See Robinette v. State, 641 N.E.2d 1286, 1288 (Ind. Ct. App. 1994) (probationer waived argument concerning constitutional validity of probation condition for failing to raise the issue at the time the condition was imposed or at his probation revocation hearing).

II. Sanctions

Next, Wolfe contends that the trial court abused its discretion by ordering him to serve the remainder of his previously suspended sentence. We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Moreover, "[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed." Id. Were trial judges not afforded this discretion, they might be less inclined to order probation for future defendants. Id.

Pursuant to Indiana Code section 35-38-2-3(g) (2004), after finding that a person has violated a condition of his or her 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.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Here, almost immediately upon his release from prison, Wolfe began violating the special conditions of his probation by engaging in an intimate, sexual relationship with Chapin, the mother of three young children, and by failing to report this relationship to the Probation Department. Less than a month after he was released from prison, Wolfe committed a new violation by staying overnight with Chapin, thereby failing to abide by his curfew.[1] Approximately three weeks later, Wolfe disregarded the conditions of his probation yet again by going to a park with Chapin and her children. In light of the number of violations, their quick succession, and how quickly they commenced upon Wolfe's release from prison, we cannot conclude that the trial court abused its discretion when it ordered Wolfe to serve his previously suspended five-year sentence.

Conclusion

Wolfe has waived appellate review of his arguments concerning the validity of his probation conditions. The trial court did not abuse its discretion in ordering Wolfe to serve his previously suspended sentence.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.

[1] In his brief, Wolfe mentions that the written probation conditions admitted into evidence at the probation revocation hearing do not contain a curfew term. However, Wolfe does not dispute that he was subject to such a condition; indeed, at the hearing, Wolfe indicated that as a condition of his probation, he was required to be at his residence between midnight and 6:30 a.m. and that he violated that term by staying overnight at Chapin's residence. Tr. p. 5.