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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM R. ROBISON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 22A01-1102-CR-33
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-9008-CF-00091

AUGUST 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

The trial court found that William Robison violated the terms of his probation and imposed five years of his previously-suspended sentence. On appeal Robison contends that the trial court abused its discretion by imposing five years because his original probationary period had already ended and he was subject to only six months of home incarceration. Concluding that Robison's probationary period was tolled for several years by the issuance of multiple bench warrants, we affirm.

In 1991, Robison pleaded guilty to two counts of Class B felony burglary, and the trial court sentenced him to ten years executed on the first count and a consecutive ten years suspended to supervised probation on the second count.

In April 1993, the trial court modified Robison's sentence to ten years with five years suspended to supervised probation on the first count and a consecutive ten years suspended to supervised probation on the second count. Credit of two and a half years was given for time served.

In November 1998, a notice of probation violation was filed. A bench warrant was issued for Robison's arrest on November 6, 1998, and the bench warrant was reissued several times thereafter. Robison was arrested and extradited from Tennessee in April 2004. On January 26, 2005, a probation revocation hearing was held during which Robison stipulated that he violated his probation and the trial court imposed a sanction. The court's modified judgment of conviction indicates that Robison was given ten years with five years suspended on the first count and a consecutive ten years suspended on the second count. It appears that five of the suspended years were ordered as supervised probation. *See* Appellant's App. pp. 10, 55.

In October 2007, another notice of probation violation was filed. A probation revocation hearing was held in June 2008, but Robison failed to appear. A bench warrant was issued for Robison's arrest on June 30, 2008, and reissued before Robison was arrested in October 2009 in Clark County, Indiana. The probation revocation hearing was scheduled for October 28, 2009. However, on October 19, Robison was released on furlough to Floyd Memorial Hospital due to medical issues. He failed to appear at the October 28 hearing, and a bench warrant was issued for his arrest in November 2009. Robison appeared in court in January 2010, and the probation revocation hearing was scheduled.

The probation revocation hearing was eventually held on March 31, 2010. Robison stipulated that he violated his probation. The trial court imposed four months of his previously-suspended sentence. The trial court also ordered Robison to complete six months of home incarceration.

On May 26, 2010, another notice of probation violation was filed. On May 27, 2010, a bench warrant was issued for Robison's arrest. In June 2010, the State filed a petition to revoke probation. Robison appeared in court later that month, and the probation revocation hearing was scheduled. The probation revocation hearing was eventually held on January 12, 2011. The trial court found that Robison had violated his probation and imposed five years of his previously-suspended sentence. Robison now appeals this sentence.

Robison does not challenge the propriety of the revocation. Instead, he contends that the trial court abused its discretion by ordering him to serve five years. Specifically,

he argues that his probationary period ended in April 2008 and that the trial court only had the authority to revoke his six months of home incarceration.

We review a trial court's sentencing decisions for probation violations for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* When a petition is filed charging a violation of probation and a summons or warrant is issued, the period of probation is tolled:

> (b) When a petition is filed charging a violation of a condition of probation, the court may:
>
> (1) order a summons to be issued to the person to appear; or
>
> (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.
>
> (c) *The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.*

Ind. Code § 35-38-2-3 (2010) (emphasis added); *see also Slinkard v. State*, 625 N.E.2d 1282, 1284 (Ind. Ct. App. 1993). Indiana Code section 35-38-2-3(c) "precludes a probationer from violating the terms of his probation and fleeing the jurisdiction until the term of the suspended sentence elapses, thereby thwarting the State's efforts to revoke his probation." *Alley v. State*, 556 N.E.2d 15, 16 (Ind. Ct. App. 1990), *trans. denied*.

When the trial court modified Robison's sentence in April 1993, his probationary period was set to end in April 2008. That period was tolled, however, when bench warrants were issued for notices of probation violations. A bench warrant was issued on November 6, 1998. A probation revocation hearing was held on January 26, 2005, during which the trial court found that Robison had violated his probation and imposed a sanction. As a result, Robison's period of probation was tolled for six years and two and

a half months. A bench warrant was issued again on June 30, 2008. A probation revocation hearing was held on March 31, 2010, during which the trial court found that Robison had violated his probation and imposed a sanction. As a result, Robison's period of probation was tolled for one year and nine months. A bench warrant was issued again on May 27, 2010. A probation revocation hearing was held on January 12, 2011, during which the trial court found that Robison had violated his probation and imposed the sentence at the heart of this appeal. As a result, Robison's probationary period was tolled for another seven and a half months. Therefore, at the time the trial court imposed five years of Robison's previously-suspended sentence on January 12, 2011, his probationary period had been tolled for a total of eight years and seven months.

Contrary to Robison's assertion, his probationary period therefore extends over eight years past April 2008. The trial court therefore did not abuse its discretion by ordering him to serve five years of his previously-suspended sentence.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.