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IN THE
COURT OF APPEALS OF INDIANA

AHMED BELLAMY,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A04-1002-CR-54
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49G04-0608-PC-145162

September 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Ahmed Bellamy appeals the sentence imposed following revocation of his probation. The sole issue for our review is whether the trial court abused its discretion in basing Bellamy's sentence upon revocation of his probation on his prior criminal history. Concluding, based on the facts and circumstances of the case, the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

On April 17, 2007, Bellamy was convicted of child molesting, a Class C felony, pursuant to a plea agreement. The plea agreement provided for an open sentence, subject to a cap of five years on the total sentence and three years on the initial executed sentence. The trial court sentenced Bellamy to five years – two years executed and three years suspended – and placed him on probation for three years. The terms of his probation required he 1) refrain from using controlled substances, and 2) maintain full-time employment or perform eight hours of community service per week.

On December 31, 2009, a Notice of Probation Violation was filed, alleging Bellamy tested positive for a controlled substance, Tetrahydrocannabinol ("THC"), and failed to maintain full-time employment or complete the requisite community service.

At Bellamy's probation violation hearing, he admitted to testing positive for THC and having only part-time employment. Bellamy also asserted – although the trial court noted it had no verification – he completed sixty percent of his required community service.

After Bellamy admitted his probation violations, the trial court recounted Bellamy's extensive criminal history as described in the pre-sentence report prepared prior to his initial sentencing. His prior offenses include convictions for possession of marijuana, possession of cocaine, and conspiracy to commit robbery. The trial court determined Bellamy violated his probation, revoked it, and ordered Bellamy to serve the remainder of his outstanding sentence of three years in prison. Bellamy now appeals his sentence.

Discussion and Decision

I. Standard of Review

"Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). "Probation is a matter of grace and a conditional liberty which is a favor, not a right." Cooper v. State, 917 N.E.2d 667, 671 (Ind. 2009). Trial courts grant probation and set conditions, and may revoke it if those conditions are violated. Id.; see also Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007) (noting the statutory scheme "encourage[s] judicial flexibility" regarding probation and violations of probation conditions).

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion.[1] Figures v. State, 920 N.E.2d 267, 273 (Ind. Ct. App. 2010). "An abuse of discretion occurs if the decision is against the logic and effect of the facts

[1] This case does not raise an issue under Article 7, section 4 of the Indiana Constitution which permits our independent review of a sentence. See Ind. Appellate Rule 7(B); Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008) (stating the supreme court and the court of appeals are authorized to perform this function). "This is not the correct standard to apply when reviewing a sentence imposed for a probation violation." Prewitt, 878 N.E.2d at 188.

and circumstances before the court." Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). Pursuant to Indiana Code section 35-38-2-3(g), if a petition to revoke probation is filed during the defendant's probationary period and the trial court finds the defendant has violated any terms of probation, the trial court may 1) continue the defendant on probation, 2) extend the defendant's probationary period by up to one year, or 3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

II. Revocation of Probation

Bellamy asserts the sentence imposed after revocation of his probation was erroneously based on his prior criminal history rather than on the violations of the conditions of his probation.

Probation revocation is a two-step process. First, the trial court must make a factual determination that the defendant violated a probation condition. Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). Second, the trial court must determine whether the violation warrants revocation of the defendant's probation. Id. Here, the trial court determined Bellamy violated his probation based upon Bellamy's admissions.

The trial court further determined Bellamy's probation should be revoked in full. As Bellamy claims, the trial court recited his criminal record prior to his guilty plea rather than commenting on whether the violations warranted revocation in full. Were Bellamy's criminal history alone the basis for the sanction, it may have been erroneous. However, because one of Bellamy's probation violations was testing positive for THC,

the frequency of drug offenses in his criminal history is especially significant in evaluating that violation.

Bellamy also failed to comply with two other conditions of probation: being employed full-time and completing community service. The trial court's sanction may have been harsh regarding the employment condition given the current economy, and regarding the community service condition given Bellamy's completion of sixty percent of the required hours to date and the possibility he could still complete it during his term of probation. However, taking all violations into account, including considering the history of drugs in his past, revoking probation in full was not against the logic and effect of the facts and circumstances before the trial court.

Conclusion

The imposition of the remainder of Bellamy's sentence following his probation violation was not an abuse of discretion, and we therefore affirm the sentence.

Affirmed.

MAY, J., and VAIDIK, J., concur.