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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JANE ANN NOBLITT
Columbus, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE M. COOPER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROSS PUSHOR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A05-1011-CR-706

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause Nos. 03D01-0801-FD-217, 03D01-0711-FD-2142

September 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ross Pushor (“Pushor”) appeals the trial court’s order revoking his probation and raises the following restated issue for our review: whether the trial court abused its discretion when it revoked his probation and ordered him to serve his entire suspended sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 2, 2009, Pushor pleaded guilty pursuant to a written plea agreement with the State to one count of possession of a controlled substance as a Class D felony under Cause Number 03D01-0801-FD-217 (“Cause 217”) and to one count of theft as a Class D felony under Cause Number 03D01-0711-FD-2142 (“Cause 2142”). On March 3, 2009, he was sentenced to three years with one year suspended under Cause 217 and to two years, all suspended under Cause 2142. The trial court ordered these sentences to be served consecutively to each other.

Pushor began probation in late July 2010 after serving the executed portion of his sentence at a community corrections facility. On September 3, 2010, the State filed a petition to revoke Pushor’s probation, alleging in pertinent part that he violated a condition of his probation by admitting that he had used heroin on September 1, 2010. *Appellant’s App.* at 126. He had begun using heroin while still incarcerated in the community corrections facility. The probation department offered intensive, inpatient treatment at the Southern Indiana Forensic Diversion Program in Clarksville, Indiana, but Pushor refused this opportunity because “it was really far away,” he “wouldn’t be able to see the birth of [his] child,” and he thought he would be better suited to a program where

“[he] can learn how to deal with [his] drug issues while [he’s] out in the world instead of being locked up.” *Tr.* at 8-9.

At the probation revocation hearing, Pushor admitted that he violated his probation under both cause numbers by using heroin. *Id.* at 23. Because Pushor refused to participate in the inpatient treatment program in Clarksville, the probation department recommended that Pushor be ordered to serve the suspended sentences under both cause numbers. *Id.* at 24. The following exchange occurred between the trial court and Pushor:

The Court: Okay. Well, Mr. Pushor, basically you have two choices, consider doing the forensic diversion program in Clark County or go to prison. You said . . . that you don’t want to go to forensic diversion. Is that still your position?

Pushor: Yes.

Id. at 26. The trial court then revoked Pushor’s probation and ordered him to serve three years executed, the balance of his previously-suspended sentences, in the Department of Correction. Pushor now appeals.

DISCUSSION AND DECISION

Pushor incorrectly challenges the appropriateness of his sentence under Indiana Appellate rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Our Supreme Court has previously determined that this is not the correct standard to apply when reviewing a sentence imposed for a probation violation. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Ind. Code § 35-38-2-3; *Prewitt*, 878 N.E.2d at 188. “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.” *Id.* “If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.* Accordingly, a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

Pushor contends that the trial court erred in ordering him to serve his entire previously-suspended sentence. He contends this is because he willingly admitted that he had violated his probation by failing a urine screen, he was straightforward about his difficulty dealing with drug addiction, and he had requested that the trial court consider referring him to an outpatient treatment facility. Pushor further claims that the trial court sentenced him without indicating its reasons why imposition of all the suspended time was appropriate.

The record shows that Pushor had a lengthy history of abusing drugs, which started when he became addicted to opiates at age sixteen and progressed to heroin. Pushor began using heroin intravenously during his incarceration in the community

corrections facility. A community corrections supervisor testified that Pushor refused to be placed in the inpatient drug treatment facility in Clarksville, Indiana. *Tr.* at 14. The probation department had recommended inpatient treatment for Pushor due to his long history of drug abuse, the fact that he began using drugs again while incarcerated and continued to do so after being released to probation, and attempted to conceal his drug use. *Id.* at 14-15. The probation department did not consider Pushor to be a good candidate for outpatient treatment based upon these reasons. When questioned by the State about his reasons for rejecting the opportunity for placement in the Clarksville facility, Pushor responded: “Um I don’t know, mainly the location. I don’t know. I’m just a stubborn mess I guess. Stupidity.” *Id.* at 11.

The record shows that the trial court considered placement in the Clarksville facility as an alternative to incarceration: “basically you have two choices, consider doing the forensic diversion program in Clark County or go [to] prison.” *Id.* at 26. Pushor consistently declined the opportunity for this alternative. Because Pushor refused to participate in the inpatient treatment program, probation recommended that he be ordered to serve the balance of his previously-suspended sentence. We conclude that sufficient evidence supported the trial court’s decision to revoke Pushor’s probation and to order him to serve his previously-suspended sentence executed in the Department of Correction. The trial court did not abuse its discretion.

Affirmed.

BAKER, J., and BROWN, J., concur.