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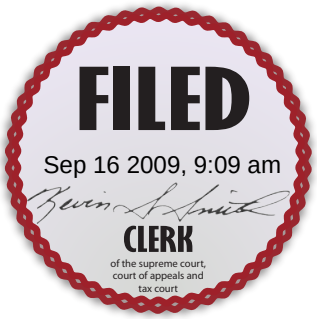

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IN THE
COURT OF APPEALS OF INDIANA

MESHA MARIE YOUNGBLOOD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0901-CR-74
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0307-FB-00296

SEPTEMBER 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Mesha Youngblood was found to have violated the terms of her probation and was sentenced to serve six years of her previously suspended sentence. On appeal she contends the court erred in admitting evidence obtained in a warrantless search of her residence and abused its discretion in ordering her to serve six years of her unexpired sentence. We affirm.

In May 2004, Youngblood pled guilty to dealing in cocaine, a Class B felony, in exchange for dismissal of an additional charge. She was sentenced to sixteen years, with seven years executed and the balance of the sentence suspended but with five years to be served on probation. She was released from prison and began probation on April 1, 2008.

On September 12, 2008, a probation officer and two police officers from the drug task force conducted a search of Youngblood's apartment. They discovered several items of drug paraphernalia and evidence of use and possession of drugs. This resulted in new charges being filed against Youngblood and the filing of a petition to revoke her probation. Youngblood filed a motion to suppress the results of the search in the case involving the new charges.

In October 2008, with Youngblood's consent, the trial court held a combined hearing on both the motion to suppress and the probation violations. The hearing continued in December 2008. At the conclusion of the evidence on the motion to suppress, the trial court denied the motion. The court then heard evidence concerning the probation violations, including Youngblood's failure to 1) update her address with her probation officer, 2) complete a substance abuse evaluation, and 3) notify her probation

officer of her change in employment. During this portion of the hearing, Youngblood did not object to the admission of the evidence obtained during the warrantless search of her home. At the conclusion of the hearing, the trial court denied Youngblood's motion to suppress and ordered her to serve six years of her remaining sentence. Youngblood appeals.

Youngblood first argues that the trial court erred in admitting evidence at the probation revocation hearing that was found during a warrantless search of her home. The State contends the issue is waived because Youngblood did not object to the admission of the evidence at the portion of the hearing devoted to evidence on the probation revocation. While the better practice might have been for counsel in the revocation proceeding[1] to have expressly shown a continuing objection to this evidence, we conclude that because of the combined nature of the proceedings, any potential error has been adequately preserved.

Thus, the question before us in the revocation proceeding is properly whether the court erred in admitting the evidence found in the search. We review that ruling for abuse of discretion. We will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Micheau v. State*, 893 N.E.2d 1053, 1059 (Ind. Ct. App. 2008), *trans. denied*. That, of course, in the present case depends on whether the court properly denied the motion to suppress. Review of the court's ruling on the motion to suppress is similar to our review of other sufficiency matters, that is, whether

[1] At the combined hearing Youngblood was represented by two attorneys, one concerning the new charges and another for the revocation proceeding.

there is substantial evidence of probative value that supports the decision. *Bonner v. State*, 776 N.E.2d 1244, 1246-47 (Ind. Ct. App. 2002), *trans. denied*.

If a search is made by probation officers, or police working with probation officers, and is connected to the enforcement of conditions of probation rather than for normal law enforcement purposes, then the search may be conducted without a warrant so long as the search is reasonable. *Micheau*, 893 N.E.2d at 1059. The State must demonstrate that a warrantless search of a probationer was a true probationary search and not an investigatory search. *Id.*

Here, our review of the evidence reveals that the police had a list of persons on probation. On September 12, 2008, Detective Kevin Early, who was assigned to the Drug Task Force, contacted Harley Allen, a regular probation officer, and advised him that Early had information that Youngblood was using and/or selling illegal drugs. Allen is a regular probation officer and one of the primary field officers. The police did not request that the probation department conduct a home visit to Youngblood. Allen verified that Youngblood was on probation and called Bill Harp, a field officer assigned primarily to home detention, to see if he could visit Youngblood's residence. He told Harp to contact the Drug Task Force and have officers accompany him. This was normal practice where possession of drugs was involved. It was also normal for Harp to make such visits.

Harp, accompanied by Detectives Early and Stephan Blackwell, went to the apartment at 2438 Meridian Street in Anderson. Harp made the original contact with

Youngblood and remained with her while Early and Blackwell searched the apartment. They discovered a digital scale which contained a white residue, a metal tube with a burnt wire mesh and a metal spoon containing a burnt residue, which Early believed to be evidence of crack cocaine use, and a Hydrocodone pill.

Based upon this evidence, we conclude there was substantial evidence of probative value supporting the court's decision to deny the motion to suppress. The evidence disclosed that it was regular procedure in the probation department to perform a home visit and search, accompanied by police officers, when the probation department had been advised of illegal drug use by one of its probationers. It follows that the court did not abuse its discretion in considering the evidence in the probation revocation proceeding.[2]

Youngblood also argues the court abused its discretion by requiring her to serve six years of her nine year suspended sentence. The controlling statute, Indiana Code § 35-38-2-3(g), provides that if a court finds that a person has violated a condition at any time before the termination of the period of probation, it may *inter alia* order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

Since probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled, the court's decision is reviewable only for abuse of discretion. *Prewitt v. State,* 878 N.E.2d 184, 188 (Ind. 2007). Youngblood's argument that the court abused its discretion in revoking six years of her previously suspended

[2] No contention has been made on appeal attacking either the form of the consent to search contained in Youngblood's terms of probation or the reasonable nature of the search that was conducted.

sentence is premised upon her argument that the results of the search should have been suppressed. This would have left only the matter of keeping the department advised of her address and her work status as violations. We need not consider whether those remaining violations were sufficient to sustain the court's ruling since we have already determined that the results of the search were properly admitted. Thus, on the basis of the court's findings, we hold that it did not abuse its discretion by ordering Youngblood to serve six years of her remaining sentence.

Affirmed.

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