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IN THE
COURT OF APPEALS OF INDIANA

STACY A. JENKINS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 63A01-1102-CR-050
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Jeffrey L. Biesterveld, Judge
Cause Nos. 63C01-0707-FC-450 and 63C01-0909-FC-613

October 13, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Stacy Jenkins's probation was revoked by the Pike Circuit Court after he tested positive for an illegal substance. Jenkins appeals and argues that the trial court abused its discretion when it ordered him to serve the balance of his sentence in the Department of Correction.

We affirm.

Facts and Procedural History

On July 7, 2010, Jenkins pleaded guilty to Class C felony non-support of a child under cause number 63C01-0707-FC-450. On that same date, Jenkins pleaded guilty to Class D felony maintaining a common nuisance, Class A misdemeanor possession of marijuana, and with being an habitual offender under cause number 63C01-0909-FD-613. A sentencing hearing was held for both causes on August 23, 2010.

For the Class C felony non-support of a child conviction, Jenkins was ordered to serve an eight year sentence, but those eight years were suspended to probation. Jenkins was ordered to serve that sentence consecutive to the sentences imposed under cause number 63C01-0909-FD-613. For Class D felony maintaining a common nuisance, Jenkins was ordered to serve three years with one and one-half years suspended to probation and he was ordered to serve a concurrent one-year sentence, suspended to probation, for the Class A misdemeanor possession conviction. The trial court ordered him to serve a consecutive six-year sentence, with five years suspended to probation, for the habitual offender adjudication. Jenkins was therefore ordered to serve an aggregate sentence of two and one-half years executed and fourteen and one-half years suspended

to probation. The trial court ordered the executed portion of his sentence to be served on work release.

Just two months after he was sentenced, Wabash Valley Regional Community Corrections filed a notice of community corrections violation alleging that Jenkins failed a drug test. On October 20, 2010, the State filed a motion to revoke Jenkins's placement in community corrections and probation. The State alleged that Jenkins's random drug screen tested positive for amphetamines/methamphetamine. At the November 22, 2010 probation revocation hearing, Jenkins admitted the allegation of drug use in the State's motion. The trial court concluded that Jenkins violated the terms of his community corrections placement and probation.

On January 24, 2011, the trial court held a "re-sentencing hearing." Appellant's App. p. 11. The trial court revoked Jenkins's placement in community corrections and revoked and terminated his probation. The court then ordered Jenkins to serve the balance of his aggregate seventeen-year sentence in the Indiana Department of Correction. Jenkins now appeals.

Discussion and Decision

Jenkins argues that the "trial court abused its discretion when it omitted from its sentencing statement reasons contained in the record and advanced for consideration in favor of a more modest sentence," and that his sentence is inappropriate "in light of the circumstances surrounding the offense and the peculiar character of Stacy A. Jenkins." Appellant's Br. at 6. In response, the State contends that Jenkins is attempting to raise an impermissible collateral challenge to his original sentence.

On August 23, 2010, the trial court ordered Jenkins to serve an aggregate seventeen-year sentence with two and one-half years executed to be served on work release and fourteen and one-half years suspended to probation. Jenkins was therefore given a unique opportunity to possibly avoid over fourteen years of incarceration in the Department of Correction. But Jenkins wasted that opportunity when he violated the terms of his community corrections placement and his probation by failing a drug test two months after he was sentenced.

Further, Jenkins did not file a direct appeal of his sentence, but is appealing following the revocation of his community corrections placement and probation. To the extent that he is challenging the sentence imposed following his convictions, his appeal constitutes an impermissible collateral attack on his underlying sentence, and we do not have jurisdiction to entertain that issue. Addington v. State, 869 N.E. 1222, 1224 (Ind. Ct. App. 2007).

However, we may consider whether the trial court abused its discretion when it ordered Jenkins to serve the balance of his sentence in the Department of Correction following the revocation of his community corrections placement and probation.[1] "[A] trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard." Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and

[1] Indiana Code section 35-38-2-3(g) provides that "[i]f the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may . . . [o]rder execution of all or part of the sentence that was suspended at the time of initial hearing."

circumstances. Id. Furthermore, "the judge should have considerable leeway in deciding how to proceed." Id. Consequently, so long as proper procedures have been followed, the trial court may order execution of a suspended sentence after finding a violation by a preponderance of the evidence. Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999); see also Ind. Code § 35-38-2-3(g). Finally, we observe that "a defendant is not entitle to serve a sentence in a probation program; rather, such placement is a 'matter of grace' and a 'conditional liberty that is a favor, not a right.'" Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006) (citations omitted).

Here, the trial court gave Jenkins an extraordinary opportunity to serve the executed portion of his sentence in work release and to avoid over fourteen additional years of incarceration. This is particularly remarkable in light of the fact that Jenkins was adjudicated an habitual offender. But two months into his community corrections placement and probation, he tested positive for use of amphetamines/methamphetamine. Jenkins's disrespect for the rule of law is evident in his unwillingness to comply with the terms of his community corrections placement and probation and in his criminal history, which consists of seven felonies and eleven misdemeanors. For these reasons, we conclude that the trial court did not abuse its discretion when it imposed the balance of Jenkins's suspended sentence after revoking his probation.

Affirmed.

BAILEY, J., and CRONE, J., concur.