

STATEMENT OF THE CASE

Defendant-Appellant, Nathan Allyn Richardson (Richardson), appeals the trial court's imposition of a three year executed sentence following the revocation of his probation.

ISSUE

Richardson raises one issue for our review, which we restate as the following: Whether the trial court abused its discretion when it sentenced him to a three year term at the Indiana Department of Correction after revoking his probation.

FACTS AND PROCEDURAL HISTORY

On January 23, 2003, the State filed an Information charging Richardson with Count I, burglary, Ind. Code § 35-43-2-1, a Class B felony; and Count II, theft, a class D felony, I.C. § 35-43-4-2. On September 15, 2003, Richardson pled guilty to both Counts pursuant to a written plea agreement. On October 14, 2003, the trial court sentenced Richardson to eight years with six years suspended to probation for Count I and three years with one year suspended to probation for Count II. The sentences were to run concurrent with each other but consecutive to two previous convictions, thereby giving Richardson a total sentence of fourteen years with six years suspended to probation. On November 17, 2008, the trial court ordered Richardson to pay restitution of \$400 as a condition of his probation at the rate of not less than \$50 per month.

On July 30, 2009, the State filed a notice of violation of probation alleging that Richardson had failed to pay restitution, failed to pay probation fees, and tested positive for

marijuana and hydrocodone. Richardson admitted to these allegations on August 10, 2009, but no penalties were imposed by the trial court. On June 4, 2010, the State filed a second notice of violation of probation alleging that Richardson had failed to pay restitution, failed to pay probation fees, and had tested positive for marijuana. Richardson admitted to these allegations on July 6, 2010. On August 3, 2010, the trial court deferred sanctions pending the possible acceptance of Richardson into Mental Health Court. On November 12, 2010, Richardson's probation officer filed a notice of termination from Mental Health Court for failing to comply with the treatment participation agreement. On November 3, 2010, the trial court terminated Richardson's participation in Mental Health Court, found that he had violated the terms of his probation, and ordered three years of his previously suspended sentence revoked and to be served at the Indiana Department of Correction.

Richardson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Richardson argues that the trial court abused its discretion when it sentenced him to an executed sentence of three years at the Department of Correction. Specifically, Richardson argues, “[a]s he had been gainfully employed prior to his incarceration, the [c]ourt should have considered placement in community corrections such as work release.” (Appellant's Br. p. 10).

When reviewing a trial court's sentencing decision for a probation violation, we review the decision under the abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184,

188 (Ind. 2007). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.*

Probation is a matter of grace left to the trial court's discretion. *Id.* Once a trial court has exercised its grace by ordering probation rather than incarceration, the court should have considerable leeway in deciding how to proceed. *Id.* If this leeway were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges may fear being overturned and become less inclined to offer probation to future defendants. *Id.*

Richardson's sentence was not an abuse of discretion. Richardson violated his probation twice by failing to pay restitution, failing to pay probation fees, testing positive for hydrocodone once, and testing positive for marijuana twice. No sanctions were imposed after the first violation, and after the second violation, sanctions were deferred upon Richardson's participation in the Mental Health Court program offered by Madison County, which Richardson also did not comply with. The trial court could reasonably infer from Richardson's failure to complete the Mental Health Court program that Richardson still did not appreciate the gravity of his situation.

Given Richardson's multiple probation violations and unwillingness or inability to complete the Mental Health Court program, the trial court acted well within its discretion to order him to serve three years of his previously suspended sentence.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it imposed an executed penalty of three years of Richardson's previously suspended sentence following his admission to violating his probation.

AFFIRMED.

NAJAM, J. and MAY, J. concur