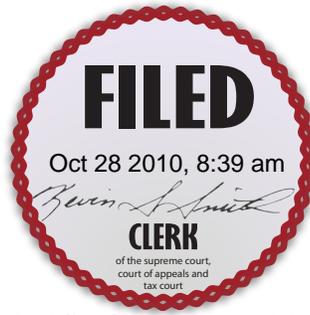


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CLARENCE DAVIS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 71A04-1003-CR-273

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause Nos. 71D01-0907-FC-174 and 71D01-0412-FC-424

October 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Clarence Davis challenges a six-year sentence imposed after he violated probation. He alleges that the trial court abused its discretion when it refused to sentence him to less than six years based on consideration of time he was incarcerated on a charge that was eventually dropped. Finding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

Davis pled guilty to class C felony robbery and class D felony theft in August of 2005. The court sentenced him to eighteen months of home detention on the theft charge and eight years of incarceration on the robbery charge, with six years thereof suspended. On February 26, 2007, the State charged Davis with class B felony robbery. Based on this charge, on March 9, 2007, the State filed a petition to revoke probation. Because he could not post bond, Davis remained in State custody. The State ultimately dismissed the robbery charge and withdrew its petition to revoke probation on May 9, 2008. After spending approximately fourteen months in incarceration on the robbery charge, Davis was released from custody.

In June of 2009, Davis went to the residence of his sister-in-law. He confronted her and asked for the keys to her automobile. After she refused, he punched her in the face, struck her in the head, and took her keys. He then fled from the residence in her automobile. On June 26, 2009, South Bend police detained Davis. The State charged Davis with class D felony auto theft and class C felony battery on July 10, 2009. Based on this incident, the State also filed a request for revocation of probation on July 29, 2009.

On December 15, 2009, Davis pled guilty to class D felony auto theft and class A misdemeanor battery and admitted that he violated his probation. Appellant's App. at 30-31. The court held a sentencing hearing on January 26, 2010. At the hearing, the court sentenced Davis to concurrent sentences of two years on the auto theft conviction and one year on the battery conviction. The court also ordered that the six years that had been previously suspended in the August 2005 case be served in the Department of Correction. The two-year sentence on the battery and theft convictions was to be served consecutive to the six-year sentence for the probation violation. Davis now appeals the sentence imposed pursuant to his probation violation.

Discussion and Decision

“Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008). Accordingly, “a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (citation omitted).¹

If the trial court finds that probation has been violated, it may do one or more of the following:

- (1) Continue the person on probation, with or without modifying or

¹ As an initial matter, Davis argues that the sentence imposed for his probation violation should be reviewed for appropriateness under Indiana Appellate Rule 7(B). Appellant's Br. at 7. The Indiana Supreme Court has stated otherwise. See *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008) (“[T]he appellate evaluation of whether a trial court’s sanctions are ‘inappropriate in light of the nature of the offense and the character of the offender’ is *not the correct standard to apply when reviewing a trial court’s actions in a post-sentence probation violation proceeding.*”) (emphasis added).

enlarging the conditions.

(2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g).

Davis argues that the decision to sentence him to the full six years that was suspended following his August 2005 guilty plea was an abuse of discretion. Davis asked the trial court to reduce his sentence on the probation violation by the “period of time that [he] was incarcerated while the petition to revoke . . . and the revocation case was pending.” Tr. at 9-10. When the trial court requested the legal authority upon which he was relying, Davis admitted that he was aware of no legal authority that would compel the trial court to reduce the sentence but asked that the court reduce the sentence as a “matter of equity” and in consideration of “fundamental fairness.” *Id.* at 9-11.

The time that Davis spent in State custody between March of 2007 and May of 2008 was not based on the petition to revoke his probation. Davis was incarcerated during this time because he had been charged with a crime and because he was not able to post the \$7500 cash bond. Additionally, Davis has a criminal record that includes twenty-two misdemeanors and eight felonies. *Id.* at 17. Beyond the present probation revocation, Davis has been “unsatisfactorily discharged from probation” three times. Appellant's App. at 192-93. His placement in home detention or treatment programs has been revoked on four separate occasions. *Id.* at 195-98. The State also terminated his parole in March of 2000. *Id.* at 194. Based on the record before us, we conclude that the

trial court acted within its discretion in ordering Davis to serve the full six years that had been previously suspended.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.