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ATTORNEY FOR APPELLANT:

THOMAS A. DYSERT
Petersburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

DARREN S. SARGENT,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 51A05-0908-CR-442
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARTIN CIRCUIT COURT
The Honorable R. Joseph Howell, Judge
Cause No. 51C01-9407-CF-83

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Darren Sargent's probation was revoked and he was ordered to serve the entirety of his previously-suspended sentence at the Department of Correction. Sargent appeals the trial court's sentencing order, raising one issue for our review, which we restate as whether the trial court abused its discretion in sentencing him for the probation violation. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

In 1995, Sargent pled guilty to child molesting and burglary, both Class B felonies. He was sentenced to eighteen years for the burglary conviction and ten years for the child molesting conviction. The two sentences were ordered to be served consecutively, and the ten-year sentence for child molesting was suspended to ten years supervised probation.

Sargent was released from the Department of Correction in 2003 and began serving his probationary term. Among the conditions of Sargent's probation were that he "not commit, or be arrested for, any offense or violation of any . . . law that constitutes a crime, where probable cause exists, or is found, for [Sargent's] arrest," not use alcohol, and not use any unprescribed drug or controlled substance. Appellant's Appendix at 132. On May 24, 2007, the State filed a petition to revoke probation, alleging Sargent had been arrested for possession of a drug and operating while intoxicated on May 17, 2007. Sargent subsequently admitted he had violated his probation by committing the offense of operating while intoxicated, and the State struck

the remaining allegations. On September 2, 2008, the trial court ordered the following sentence:

> The Court reinstates the original sentence and suspends all of the time except for time previously served. [Sargent] shall serve one (1) year on probation in addition to original probation ordered. [Sargent] shall comply with all previously ordered terms and conditions.

Id. at 198.

On March 4, 2009, the State filed a second petition to revoke probation, alleging Sargent committed the criminal offenses of driving while suspended on January 22, 2009, and operating while intoxicated and driving while suspended on February 6, 2009. Sargent admitted "all the facts in the verified petition to revoke probation [are] true and correct." Transcript at 24. Specifically, Sargent admitted he violated the trial court's probation and sentencing orders by committing the criminal offenses set forth in the petition and by consuming alcohol. The trial court, after reflecting on the proceedings to date and noting Sargent's admission to alcohol and drug problems but failure to seek or complete treatment, sentenced Sargent to serve the ten previously-suspended years of his sentence. Sargent now appeals.

Discussion and Decision

I. Standard of Review

Probation is a matter of grace left to the discretion of the trial court. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Once a trial court has exercised its grace in ordering probation rather than incarceration, the trial court has considerable leeway in deciding how to proceed. Id. We therefore review a trial court's sentencing decisions

for violations of probation for an abuse of discretion. Id. A trial court abuses its discretion when the decision is clearly against the logic and effect of the facts and circumstances before it. Id.

II. Imposition of Full Remaining Sentence

Sargent contends the trial court abused its discretion in requiring him to serve the entirety of his previously-suspended sentence because the trial court considered acts other than those alleged in the petition to revoke probation in determining his sentence. Specifically, Sargent points to the trial court's statements that on May 17, 2007, Sargent was in possession of an illegal drug, as alleged in the first petition to revoke probation, and that Sargent never followed through on substance abuse treatment. He notes the allegation regarding the possession charge was stricken from the first petition "because [Sargent] was able to provide a valid prescription for medication that he was charged with having possessed," tr. at 8, and argues that should not have been considered by the trial court. He further notes failure to participate in substance abuse treatment was not a violation of which he was provided notice and in any event, he testified he did attend AA meetings. Relying on Bussberg v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), in which this court noted that "[b]asing a probation revocation upon claimed violations for which the defendant had received no notice is error because it violates due process," Sargent claims the trial court's sentencing decision was an abuse of discretion.

Like Sargent, the defendant in Bussberg also contended the trial court erred in making findings about matters which were not alleged as violations of his probation. We held any error was harmless because the defendant was found to have violated his

probation by ingesting methamphetamine, a violation of which he did receive notice, "and proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation." Id.

Even excluding any consideration of Sargent's possession of an illegal drug and failure to attend substance abuse treatment as improper bases for a revocation of probation, the trial court had ample basis for its decision to order Sargent to serve the entirety of his suspended sentence. Indiana Code section 35-38-2-3(g) sets forth a trial court's sentencing options if the trial court finds a probation violation:

> If the court finds that the person has violated a condition at any time before termination of the period . . . the court may:
> (1) Continue the person on probation, with or without modifying or 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.

Less than six months after the trial court exercised its grace and continued Sargent on probation after he admitted violating his probation by committing the offense of operating while intoxicated, Sargent again operated a vehicle while intoxicated. He admitted that was a violation of the terms of his probation. Clearly, Sargent abused the leeway the trial court granted him in continuing his probation after his first violation, and he repeated the violation almost immediately. The trial court did not abuse its discretion

in declining to exercise its grace further and instead ordering Sargent to serve his previously-suspended sentence of ten years.

Conclusion

The trial court did not abuse its discretion in sentencing Sargent upon finding he had violated the terms of his probation.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.