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IN THE
COURT OF APPEALS OF INDIANA

WESLEY CRABTREE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1006-CR-646
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0911-FB-96460

December 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Wesley Crabtree appeals from the trial court's order revoking his probation and imposing the execution of his previously suspended sentence. Crabtree presents the following restated issues for our review:

1. Was the evidence sufficient to support the trial court's order concluding that Crabtree had violated his probation?

2. Did the trial court abuse its discretion by imposing the execution of Crabtree's previously suspended sentence?

We affirm.

Crabtree pleaded guilty to Burglary[1] as a class B felony in exchange for the dismissal of a charge of theft and a six-year cap on the executed portion of his sentence. On January 19, 2010, the trial court accepted Crabtree's plea and sentenced him to 6 years with 122 days executed, 2068 days suspended, and 730 days on probation. On April 13, 2010, Crabtree's probation officer filed a notice of probation violation alleging that Crabtree had violated a no-contact order provision of his probation. The no-contact order prohibited him from entering the apartment complex grounds as the tenants of one of the units were the victims in the underlying case. The notice of probation violation also alleged that Crabtree had on two different days submitted diluted urine screens.

Crabtree admitted to submitting two diluted urine screens, but denied violating the no-contact order. A maintenance technician from the apartment complex testified at Crabtree's evidentiary hearing that he knew Crabtree was prohibited from entering the apartment complex property, he had seen a "mug shot" of Crabtree, he had seen Crabtree at the

[1] Ind. Code Ann. § 35-43-2-1 (West, Westlaw through 2010 2nd Reg. Sess.).

apartment complex prior to the burglary, and saw Crabtree exiting an apartment at the complex after the no-contact order had been entered.

At the conclusion of the evidentiary hearing the trial court accepted Crabtree's admission that he submitted two diluted urine screens and found that the State had met its burden of proving that Crabtree violated the no-contact order. The trial court then ordered Crabtree to serve his suspended sentence. Crabtree filed a motion to reconsider sentencing and to correct a clerical error. The trial court granted the motion in part to order a correction of the abstract. Crabtree now appeals.

1.

Crabtree argues that the evidence is insufficient to support the conclusion that he violated the no-contact provision of his probation. The State contends that Crabtree is merely asking this court to reweigh the evidence. We agree with the State.

Probation revocation proceedings are civil in nature and the State is required to prove a violation by a preponderance of the evidence. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004); Ind. Code Ann. § 35-38-2-3(e) (West, Westlaw through 2010 2nd Reg. Sess.). When reviewing the determination that a probation violation has occurred, we neither reweigh the evidence nor reassess the credibility of witnesses. *Thornton v. State*, 792 N.E.2d 94 (Ind. Ct. App. 2003). We look at the evidence most favorable to the probation court's judgment and determine whether there is substantial evidence of probative value supporting revocation. *Id*. A decision to revoke probation is within the sole discretion of the trial court and its decision is reviewed on appeal for an abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008).

We first observe that if there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Cox v. State*, 706 N.E.2d 547 (Ind. 1999). Here, Crabtree admitted that he submitted two diluted urine screens to his probation officer. That ground alone would provide a sufficient basis for revoking Crabtree's probation. *Pitman v. State*, 749 N.E.2d 557 (Ind. Ct. App. 2001) (violation of single condition of probation is sufficient to revoke probation). As Crabtree challenges only the sufficiency of the evidence to support the finding that he violated the no-contact order, we turn to those facts now.

Crabtree's probation officer testified that she discussed the no-contact order with him at his first meeting with her and that Crabtree understood that condition of his probation. A maintenance technician from the apartment complex testified at Crabtree's evidentiary hearing that he knew Crabtree was prohibited from entering the apartment complex property, he had seen a "mug shot" of Crabtree, he had seen Crabtree at the apartment complex prior to the burglary, and saw Crabtree exiting an apartment at the complex located some distance from the entrance to the complex after the no-contact order had been entered. The occupants of the apartment were not present then, and the maintenance technician noted that the door appeared to have been pried open. Crabtree also testified at the evidentiary hearing, but denied being at the apartment complex in violation of the no-contact order. Thus, the trial court was faced with conflicting accounts of Crabtree's presence at the apartment complex. The trial court chose to disbelieve Crabtree's version of the events in favor of that presented by the State. We conclude that the trial court did not abuse its discretion in doing so, as there

was substantial evidence of probative value to support the revocation on this additional ground.

2.

Crabtree argues that the trial court abused its discretion by ordering Crabtree to serve his full suspended sentence upon concluding that he had violated the conditions of his probation. We disagree.

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 standard to be applied when reviewing a trial court's actions in a post-sentence probation violation proceeding. *Prewitt v. State*, 878 N.E.2d 184, 187-88 (Ind. 2007). A trial court's action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. *Jones v. State*, 885 N.E.2d 1286 (Ind. 2008). Instead, probation violation sanctions are subject to appellate review for abuse of discretion. *Id*.

I.C. 35-38-2-3(g)(3) provides that a trial court may order the execution of the sentence that was suspended at the time of initial sentencing. The facts here show that Crabtree was on probation for just a few months before he violated the conditions of his probation by submitting diluted urine screens and by violating the no-contact order when he visited the apartment complex property where he had committed the underlying burglary offense. Although the trial court had other options available to it upon revoking Crabtree's probation, we cannot say that the trial court's decision amounted to an abuse of discretion. In his plea agreement with the State, which was subsequently accepted by the trial court, Crabtree agreed to a cap of six years on the executed portion of his sentence. Initially, he received 122

days executed with the remainder suspended for the conditional liberty of being placed on probation. Crabtree admitted to two of the three alleged violations and the trial court found a third violation. The trial court did not abuse its discretion.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.