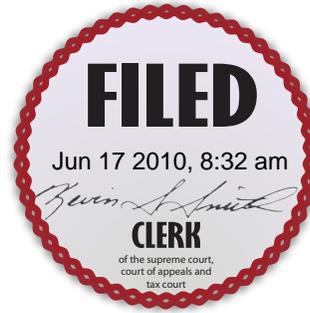


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

PATRICIA GARRISON,
Appellant- Defendant,

vs.

STATE OF INDIANA,
Appellee- Plaintiff,

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No. 48A04-0910-CR-568

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David A. Happe, Judge
Cause No. 48E01-0802-FD-62

June 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Patricia Garrison appeals the sentence imposed following the revocation of her probation. The sole issue for our review is whether the trial court erred in sentencing her to in-home detention. Concluding based upon the facts and circumstances of the case, the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

In March 2009, Garrison pleaded guilty to theft as a Class D felony and possession of a controlled substance as a Class D felony. Pursuant to the terms of the plea agreement, the trial court sentenced Garrison to concurrent eighteen-month sentences, which were suspended to probation. Four months later, Garrison's probation officer filed a notice of probation violation alleging Garrison violated the terms and conditions of her probation when she failed to 1) report to the probation office, 2) pay probation fees, 3) obtain employment, and 4) abstain from the use of illicit drugs.

At the probation revocation hearing, Garrison explained that she had not reported to her probation officer or paid her probation fees because she did not have the money to do so. She further explained that she had degenerative disc disease and was unable to work. She submitted a doctor's note verifying her medical condition and inability to work. According to Garrison, she had just begun receiving Social Security Disability benefits, and would soon be able to pay for transportation to the probation office and for probation fees. She denied using valium, despite a urine drug screen that tested positive for the substance.¹

¹ Garrison's urine drug screen also tested positive for two additional controlled substances for which she had prescriptions. She did not have a prescription for valium.

Also at the hearing, the probation department recommended revoking Garrison's probation and sentencing her to eighteen months in either the Department of Correction or in-home detention. Garrison explained that in-home detention was a financial burden, and asked the court to extend her probation if it was going to impose a sanction for the probation violation.

The trial court revoked Garrison's probation and ordered her to serve the eighteen-month sentence on in-home detention. The trial court recognized the financial hardship to Garrison and explained its sentence as follows:

I want to give you a chance to minimize the financial hardship of it in this way: If you successfully complete twelve (12) months of your in-home detention and don't have any violations . . . I'm gonna give you the option to come in and request a modification to end your sanction at that point. I'm not gonna return you to probation because probation has not been successful for you and I don't think it's gonna be in the future. . . . [y]ou're gonna need to report to the in-home detention office for an orientation and intake meeting. . . . [T]hey'll come and install the equipment in your house for home detention. . . . You will need a land line phone to do that. . . . You need to make sure you get that land line phone installed timely and they'll talk about, uh, what time frame that needs to happen on when you have your orientation I need to let you know that if you're not able to satisfy the terms of in-home detention, if you're unable to do what needs to be done there, uh, that doesn't mean that you're not gonna be facing a sanction in the case, it means we'll have to convert the sanction into something you're able to do, which could be incarceration. I don't want that to happen so I want you to make every effort you can to meet with the requirements of . . . in-home detention

Transcript at 62-65.

Thereafter, the following exchange occurred between the trial court and defense counsel:

DEFENSE COUNSEL: If there's indigent slots [for in-home detention] does the court have to issue an authorization for that or is that determined by . . .

TRIAL COURT: I don't know to be honest with you. What I'm going to direct Miss Garrison to do is have that conversation with the in-home detention staff and if she thinks she needs some intervention from the court if they think they need intervention of the court they can seek it at that time.

Id. at 66. Garrison now appeals the sentence imposed.

Discussion and Decision

Garrison argues that the trial court erred in sentencing her following the revocation of her probation. Specifically, she contends that the trial court erred in sentencing her to in-home detention without first inquiring into her ability to pay for it.

Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon her behavior in lieu of imprisonment. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. Id. Probation is also a matter of grace and a conditional liberty which is a favor, not a right. Cooper v. State, 917 N.E.2d 667, 671 (Ind. 2009). The trial court determines the conditions of probation and may revoke probation if those conditions are violated. Id.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Figures v. State, 920 N.E.2d 267, 273 (Ind. Ct. App. 2010). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. Pursuant to Indiana Code section 35-38-2-3(g), if a petition to revoke probation is filed during the defendant's probationary period and the trial court finds the defendant has violated any terms of

probation, the trial court may 1) continue the defendant on probation; 2) extend the defendant's probationary period by up to one year, or 3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing. Id.

Here, the trial court clearly could have ordered Garrison to serve her eighteen-month sentence in the Department of Correction. Instead, the court acted leniently by offering Garrison the opportunity to serve her sentence in the less restrictive environment of in-home detention. To the extent Garrison argues she should be returned to probation, we note that the trial court specifically stated it did not consider probation to be an option for her because it had not been successful for her in the past and the court did not believe it would be successful for her in the future. This determination was clearly within the trial court's discretion.

We further note Garrison directs us to no law requiring the trial court to determine the defendant's ability to pay before ordering in-home detention, and we have found none. Such laws exist in other areas. For example, a trial court is required to determine the defendant's ability to pay before ordering restitution as a condition of probation. Laker v. State, 869 N.E.2d 1216, 1220 (Ind. Ct. App. 2007).

Here, the trial court knew that Garrison had just begun receiving Social Security Disability benefits. Still, the court recognized the potential financial hardship in-home detention might cause Garrison and offered her the chance to minimize it by successfully completing twelve rather than eighteen months of in-home detention. The court also told Garrison that although it did not know whether there were indigent spots available in in-home detention, she should talk to the in-home detention staff and advise the court if she

needed court intervention to claim any such spot. Although it would be a better practice for trial courts to be familiar with the specifics of in-home detention, including the costs and the availability of spots for indigents, and to determine the defendant's ability to pay before ordering in-home detention, based upon the facts and circumstances in this case, we find no abuse of the trial court's discretion.

Conclusion

The trial court did not err in sentencing Garrison following the revocation of her probation.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.