

Eddie D. Lowe appeals the revocation of his probation. Lowe raises one issue, which we revise and restate as whether the trial court abused its discretion by ordering him to serve his suspended sentence. We affirm.

The facts most favorable to the probation revocation follow. In August 2003, Lowe was charged with attempted rape as a class B felony, burglary as a class B felony, criminal confinement as a class D felony, and sexual battery as a class D felony. Lowe pled guilty to the burglary and sexual battery counts and was sentenced to an aggregate term of twenty years for burglary as a class B felony, with eight years executed and twelve years suspended to probation, and to a term of three years for the sexual battery as a class D felony, to be served concurrent with the sentence for burglary.

In April 2007, the State filed a request for probation violation hearing alleging that Lowe committed the criminal offense of possession of paraphernalia in violation of the terms of his probation. The State subsequently amended the request and alleged that Lowe had submitted to a drug screen and tested positive for cocaine and that Lowe had committed the offenses of interference with reporting a crime and domestic battery as class A misdemeanors in violation of the terms of his probation. In November 2007, the trial court found that Lowe violated the terms of his probation and ordered Lowe to serve one year of his previously suspended sentence.

On May 15, 2009, the State filed a request for probation violation hearing alleging that Lowe had submitted to a drug screen on or about May 8, 2009 and that he “tested positive for Cannabinoids” in violation of the terms of his probation. Appellant’s

Appendix at 37. On May 21, 2009, the State filed an amended request for probation violation hearing alleging that on or around May 15, 2009 Lowe also committed, the criminal offense of maintaining a common nuisance in violation of the terms of his probation. On November 9, 2009, the trial court held a probation violation hearing at which Lowe admitted having used marijuana. The trial court revoked Lowe's probation and ordered him to serve the remaining eleven years of his previously suspended sentence.

The sole issue is whether the trial court abused its discretion by ordering Lowe to serve the remainder of his suspended sentence. Lowe argues that the trial court abused its discretion in revoking the entire portion of his previously suspended sentence of eleven years. Lowe argues that "the fact that he admitted his probationary lapses did save the court time and judicial resources." Appellant's Brief at 4. Lowe argues that he "was abused by his stepmother from the time he was a young child," that he "started abusing alcohol and drugs when he was just fifteen years old," that "[w]hen his daughter was nine-years-old, she was raped and murdered," and that "[t]hrough out [sic] [his] difficult life, he has turned to alcohol and drugs" Id. at 4. Lowe further argues that "[o]n the surface, it would appear [he] is beyond rehabilitation" but that "looking closely at his criminal record reveals ten of his twenty-four convictions were directly related to alcohol or drug abuse." Id. at 5. Lowe argues that the cost to treat him for his drug addiction "would be far less" than the cost to house him at the Department of Correction, and that "getting [him] back to work would better serve the public needs than paying to

incarcerate him.” Id. at 6. Lowe also argues that he was “accused of having a small amount of marijuana in his system” and that “the lab which tested [him] used a lower cut-off than laboratories certified by the federal government.” Id. at 7. Finally, Lowe argues that “the revocation of eleven years was not necessary to bring about his reform” Id.

The State argues that “Lowe has a particularly lengthy criminal history” and that “[b]ased on his criminal history, recent probation violations, and refusal to cooperate with therapy, Lowe is not a good candidate for additional probation or court ordered therapy of any kind.” Appellee’s Brief at 4. The State also argues that “[t]here is no question Lowe has experienced trauma and tragedy in his lifetime” but that “those experiences cannot excuse his chronic and violent criminal conduct.” Id.

Ind. Code § 35-38-2-3(g) sets forth a trial court’s sentencing options if the trial court finds a probation violation. The provision provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:

- (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.

Ind. Code § 35-38-2-3(g) (Supp. 2008). Ind. Code § 35-38-2-3(g) permits judges to sentence offenders using any one of or any combination of the enumerated options. Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007).

The Indiana Supreme Court has held that a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Id. at 188. The Court explained that “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” Id. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id. As long as the proper procedures have been followed in conducting a probation revocation hearing, “the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

Here, the trial court noted at the probation revocation hearing that Lowe had an extensive criminal history and that he “has been on probation many times, many years.” Transcript at 62. The trial court also noted that “this is [Lowe’s] second probation violation, then, on this current underlying charge” and that it “just [did] not see any benefit to continuing to try and try and try with probation.” Id. at 62-63. Indeed, the record supports the trial court’s conclusion. Lowe’s criminal history includes the

following offenses: stealing and possession of marijuana as a juvenile in 1974; a DUI in 1976; theft and public intoxication in 1977; disorderly conduct in 1979; resisting arrest, disorderly conduct, and resisting law enforcement in 1980; a DUI and battery in 1981; resisting law enforcement and burglary in 1983; driving while suspended, disregarding railroad signal, and failure of duty to stop at property damage accident in 1986; driving while suspended in 1987; operating while intoxicated and driving while suspended in 1990; public intoxication, resisting law enforcement, driving while suspended, and possession of more than thirty grams of marijuana in 1991; battery resulting in bodily injury in 1994; domestic violence and possession of marijuana in 1995; operating a vehicle as an habitual traffic violator, public intoxication, and criminal mischief in 1996; and operating a vehicle as an habitual traffic violator and resisting law enforcement in 1998. In addition, the record shows that Lowe violated the terms of his probation in 1982, 1984, 1996, and 2007.

We recognize that a number of Lowe's convictions relate to his use of alcohol and drugs and that Lowe has had some difficult life experiences. However, the record also reveals that the presentence investigation report shows that Lowe participated in "two thirty-day in-patient programs . . . in the late 1980s and one in-patient stay . . . in the 1970s" and that "each of these in-patient programs were designed to treat [Lowe] for drug and alcohol abuse." Appellant's Appendix at 62. The report also shows that Lowe "also has been treated at the Community Mental Health Centers in Vevay and in Lawrenceburg" and that Lowe "was receiving counseling . . . at the Community Mental

Health Center before being arrested on the most recent Criminal Mischief charge”

Id. Moreover, the record shows that Lowe has had repeated contacts with the criminal justice system due to his use of alcohol and drugs over a long period of time, including several lenient and probationary sentences, and that the repeated contacts do not appear to have persuaded Lowe to reform. Despite his repeated contacts with the criminal justice system and the fact that he has received treatment for his use of alcohol and drugs in the past, Lowe continued to re-offend on a regular basis. See Weiss v. State, 848 N.E.2d 1070, 1073 (Ind. 2006) (noting that the defendant’s repeated contacts with the criminal justice system have had no impact on persuading him to reform).

We also acknowledge that the cost of treatment for Lowe’s use of drugs may cost less than housing him at the Department of Correction. However, one function of the criminal justice system is to protect the welfare and safety of society, and the trial court here was permitted to find that Lowe’s own rehabilitation and the additional safety afforded to society by incarcerating Lowe under the circumstances and in light of his near-continual criminal violations outweighs the financial cost of his incarceration. See Ratliff v. Cohn, 693 N.E.2d 530, 542 (Ind. 1998) (referring to Article 1, Section 18 of the Indiana Constitution and noting that it “applies to the penal laws as a system to insure that these laws are framed upon the theory of reformation as well as the protection of society”) (citation and emphasis omitted), reh’g denied.

With respect to Lowe’s argument that he was accused of having only a small amount of marijuana in his system, we initially note that Lowe admitted to testing

positive and does not challenge the sufficiency of the evidence to revoke his probation, and we also note that in November 2007 the trial court found that Lowe violated his probation for failing a drug screen by testing positive for cocaine. The record further reveals that Lowe was ordered to comply with terms of probation as a part of his sentences in connection with numerous drug- and alcohol-related convictions (in 1976, 1977, 1980, 1981, 1990, 1991, 1995, 1996, and 1998).

Given the circumstances, we cannot say that the trial court abused its discretion in ordering Lowe to serve the entire portion of his previously suspended sentence for burglary. See Milliner v. State, 890 N.E.2d 789, 793 (Ind. Ct. App. 2008) (holding that the trial court did not abuse its discretion in reinstating the probationer's entire previously-suspended sentence), trans. denied; Crump v. State, 740 N.E.2d 564, 573 (Ind. Ct. App. 2000) (holding that the trial court did not abuse its discretion in reinstating the probationer's entire previously suspended sentence), trans. denied.

For the foregoing reasons, we affirm the trial court's order that Lowe serve the entire portion of his previously suspended sentence.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.