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IN THE
COURT OF APPEALS OF INDIANA

DOUGLAS HENDERSON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 29A05-0611-CR-645
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William Greenaway, Commissioner
Cause No. 29D04-0405-CM-2906

July 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Douglas Henderson appeals the revocation of his probation, claiming that the trial court improperly considered his statement that he had committed a subsequent criminal offense as a basis for the revocation. Henderson also argues that the 180-day sentence that the trial court imposed following the revocation was an inappropriate penalty. Concluding that the trial court properly revoked Henderson's probation and finding that the issue regarding the sentence is moot, we affirm the judgment of the trial court.

FACTS

In May 2004, Henderson was charged with operating a motor vehicle while intoxicated and operating with a BAC of .15 or more, both class A misdemeanors. Following a jury trial, Henderson was convicted of both offenses. The trial court imposed a 365-day sentence, with all but fourteen days suspended on the operating while intoxicated conviction, and ordered Henderson to serve one year on probation. Among the conditions of probation were that Henderson was to comply with all laws and report any new arrests to his probation officer.

On December 1, 2005, the State filed a notice of probation violation alleging that Henderson had violated his probation after being arrested and charged with operating a motor vehicle while suspended as a habitual traffic violator (HTV) and by failing to attend substance abuse classes. At a hearing on April 19, 2006, Henderson admitted to the first allegation and acknowledged that he had been arrested and charged with the HTV offense. Henderson specifically indicated to the trial court that he was going to plead guilty in that case. The trial court found that Henderson had violated his probation on that basis but did

not find a violation on the second allegation because the probation conditions had not required Henderson to begin his substance abuse treatment by any specific date.

At a subsequent hearing on August 23, 2006, the trial court sentenced Henderson to 180 days of incarceration. Henderson now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. Brattain v. State, 777 N.E.2d 774, 776 (Ind. Ct. App. 2002). When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. Piper v. State, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002).

As we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Strowmatt v. State, 779 N.E.2d 971, 976 (Ind. Ct. App. 2002). We also note that neither an arrest alone nor the filing of charges alone is sufficient to warrant revocation of probation. Martin v. State, 813 N.E.2d 388, 390-91 (Ind. Ct. App. 2004). However, probation may be revoked where there is probable cause to believe that the probationer committed a new criminal offense. Whatley v. State, 847 N.E.2d

1007, 1010 (Ind. Ct. App. 2006).

II. Henderson's Admission

In this case, Henderson asserts that even though there was a proposed guilty plea to the HTV charge, he made "statements amounting to a protestation of innocence" at the revocation hearing. Appellant's Br. p. 8. Thus, Henderson contends that the situation was tantamount to a mere arrest that did not justify a revocation of probation.

However, the record shows that Henderson admitted to the arrest and indicated that the charge was going to be resolved through a "plea" in which the conviction would be reduced to a misdemeanor after he completed probation in that case. Tr. p. 13. By indicating that he was going to enter into a plea, Henderson necessarily admitted not only that there was probable cause to believe he committed the new offense, but that he actually had committed that new offense. Even more compelling, Henderson specifically admitted later during the revocation hearing that he pleaded guilty to a class D felony in the HTV case with the condition that the conviction would be reduced to a misdemeanor if he successfully completed probation. Id. at 26-27. Henderson specifically told the trial court that he was admitting to the violation "so we can sentence it." Id. at 13. Finally, even though Henderson might have initially argued that he did not received notice of his suspended driving privileges, he ultimately pleaded guilty to the HTV charge, thus indicating that he was admitting to operating a vehicle with knowledge that he was suspended. Id. at 13, 37.

In sum, the record shows that Henderson pleaded guilty to committing a new criminal offense while he was released on the conditional liberty of probation. As a result, the trial

court properly revoked Henderson's probation.

III. Henderson's Sentence

Henderson also claims that the trial court abused its discretion in ordering him to serve 180 days in jail following the revocation. Specifically, Henderson contends that although "the trial court did not give proper weight to the mitigating factors," he concedes that there is "no remedy available . . . other than the precedential value that would apply from a favorable ruling." Appellant's Br. p. 9.

The parties agree that Henderson has already completed the sentence that the trial court imposed on August 23, 2006. Tr. p. 51-52. The longstanding rule is that a case is deemed moot and will be dismissed when no effective relief can be rendered to the parties before the court. See Richardson v. State, 402 N.E.2d 1012, 1013 (Ind. Ct. App. 1980) (holding that an appeal regarding a sentence that has already been served is moot). An issue is generally deemed moot when the case is no longer live and the parties lack a legally cognizable interest in the outcome of its resolution or where no effective relief can be rendered to the parties. Sadler v. State ex rel. Sanders, 811 N.E.2d 936, 956 (Ind. Ct. App. 2004). Because Henderson has already served his sentence, we decline to address the propriety of the sentence. See Richardson, 402 N.E.2d at 1013 (holding that this court does not "engage in discussions of moot questions or render advisory opinions").

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.