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IN THE
COURT OF APPEALS OF INDIANA

THOMAS HOPKINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1101-CR-13
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle III, Judge
Cause Nos. 48C01-0811-FD-661, 48C01-0811-FD-670,
48C01-0903-FD-120, 48C01-0709-FC-464

August 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

In this consolidated appeal, Appellant-Defendant Thomas Hopkins appeals following the revocation of his probation. Hopkins contends that the evidence was insufficient to support the revocation of his probation and that the trial court abused its discretion by revoking his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

On September 20, 2007, Hopkins was charged with Class C felony burglary and Class D felony theft under cause number 48C01-0709-FC-464 ("Cause No. FC-464"). Hopkins pled guilty to the Class C felony burglary charge on April 21, 2008, and was sentenced to four years, all of which was suspended to probation. In exchange, the State agreed to dismiss the remaining Class D felony theft charge.

On November 18, 2008, Hopkins was charged with Class D felony resisting law enforcement under cause number 48C01-0811-FD-661 ("Cause No. FD-661"). On November 20, 2008, Hopkins was charged with Class D felony possession of marijuana and Class A misdemeanor resisting law enforcement under cause number 48C01-0811-FD-670 ("Cause No. FD-670"). On November 24, 2008, the Madison County Probation Department ("Probation Department") filed an amended petition alleging that Hopkins had violated his probation under Cause No. FC-464 by committing the offenses charged under Cause Nos. FD-661 and FD-670. Hopkins pled guilty to Class D felony resisting law enforcement under Cause No. FD-661 and Class D felony possession of marijuana under Cause No. FD-670, and he admitted that he violated the terms of his probation under Cause No. FC-464. In exchange, the State agreed to dismiss the remaining Class A misdemeanor resisting law

enforcement charge. The trial court sentenced Hopkins to concurrent eighteen-month terms under Cause Nos. FD-661 and FD-670, with twelve months executed on in-home detention and six months suspended. The trial court also revoked twelve months of Hopkins's previously suspended sentence in Cause No. FC-464 to in-home detention and ordered that the concurrent sentence for Cause Nos. FD-661 and FD-670 be served consecutively to the twelve-month revoked sentence under Cause No. FC-464.

On March 4, 2009, Hopkins was charged with Class D felony dealing in marijuana, Class D felony possession of marijuana, and Class D felony maintaining a common nuisance under cause number 48C01-0903-FD-120 ("Cause No. FD-120"). Hopkins pled guilty as charged on June 22, 2009, and was sentenced to thirty-six months, with eighteen months executed on in-home detention and eighteen months suspended.

On November 22, 2010, the Probation Department filed amended notices of violation of probation/suspended sentences in Cause Nos. FC-464, FD-661, FD-670, and FD-120, alleging that Hopkins had committed numerous violations of the conditions of his probation and suspended sentences. On December 20, 2010, the trial court conducted a consolidated revocation hearing. During the revocation hearing, Hopkins admitted to certain probation violations under Cause No. FC-464, including failure to pay court costs, restitution, and probation and administrative fees. The State presented evidence that Hopkins had committed two Class A misdemeanor batteries causing bodily injuries to his victims and a Class D felony residential entry, failed to keep the Probation Department informed of his address, failed to timely report to the Probation Department, and committed a curfew violation.

Finding that Hopkins had violated the terms of his probation, the trial court revoked his probation and ordered that he serve an aggregate term of seven years of his previously suspended sentences in the Department of Correction. This consolidated appeal follows.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Hopkins argues that the State did not present sufficient evidence to support the revocation of his probation.

> A probation revocation hearing is in the nature of a civil proceeding. Therefore, an alleged violation of probation only has to be proven by a preponderance of the evidence. When we review the determination that a probation violation has occurred, we neither reweigh the evidence nor reassess witness credibility. Instead, we look at the evidence most favorable to the [trial] court's judgment and determine whether there is substantial evidence of probative value supporting revocation. If so we will affirm.

Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (citations and quotations omitted). The violation of a single condition of probation is sufficient to revoke probation. *Wilson v. State*, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999).

On appeal, Hopkins claims that the evidence is insufficient to support the revocation of his probation solely because the State failed to prove by a preponderance of the evidence that he committed the new criminal offense of Class D felony residential entry. Importantly, however, we observe that Hopkins does not challenge the sufficiency of the evidence supporting the trial court's determination that he committed multiple other violations of the conditions of his probation. Hopkins does not challenge the sufficiency of the evidence supporting the trial court's determination that he violated the terms of his suspended

sentences in Cause Nos. FD-661, FD-670, and FD-120 by committing two separate acts of Class A misdemeanor battery resulting in bodily injury on October 5, 2010, and October 7, 2010, or that he violated the terms of his probation in Cause No. FC-464 by (1) committing the above-mentioned batteries resulting in bodily injury; (2) failing to keep the Probation Department informed of his address; (3) failing to timely report to the Probation Department; (4) failing to pay court costs, restitution, and probation and administrative fees; and (5) committing a curfew violation. Upon review, we conclude that the evidence is sufficient to sustain the trial court's determination that Hopkins violated various conditions of his probation in the above-stated ways. Accordingly, we need not consider whether the State sufficiently proved that Hopkins committed Class D felony residential entry. *See Wilson*, 708 N.E.2d at 34 (providing that the violation of even a single condition is sufficient to revoke probation).

II. Probation Revocation

Hopkins also contends that the trial court abused its discretion by revoking his probation. 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. *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). 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. *Id*. Generally speaking, as long as the trial court follows the procedures outlined in Indiana Code section 35–38–2–3, the trial court may properly order execution of a suspended sentence. *Id*. (citing *Crump v. State*, 740 N.E.2d 564, 573

(Ind.Ct.App.2000)). Indiana Code section 35–38–2–3(g) (2007)[1] 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:
> (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; or
> (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

In arguing that the trial court abused its discretion by revoking his probation, Hopkins again claims that the State failed to prove that he committed residential entry. Again, even assuming that this is true, Hopkins's argument must fail in light of our conclusion that the evidence was sufficient to support the trial court's determination that Hopkins violated the conditions of his probation in various ways, including (1) committing two separate batteries resulting in bodily injury; (2) failing to keep the Madison County Probation Department informed of his address; (3) failing to timely report to the probation department; (4) failing to pay court costs, restitution, and probation and administrative fees; and (5) committing a

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[1] We note that Indiana Code section 35-38-2-3 was amended in 2008 as follows:

> (g) 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.

Accordingly, because the amendment did not alter the options for additional punishment available to the trial court after it finds that a person has violated the terms of his probation, the amendment would not affect the outcome of the instant matter.

curfew violation.

Hopkins also argues that the trial court abused its discretion in revoking his probation because "the evidence showed that [he] was taking some positive steps to better himself." Appellant's Br. p. 13. In support, Hopkins claims that the evidence showed that he had only four months left until he graduated from Lincoln Tech, that while incarcerated in the Madison County Jail, he attended "Thinking for a Change," which changed his outlook on the people and places associates with and frequents, that he helps support his child, and that he had arranged for employment opportunities. Appellant's Br. p. 13. While we commend Hopkins for nearing the completion of his degree from Lincoln Tech, attending self-improvement programs, providing for his child, and arranging employment opportunities, we cannot say that the trial court's decision to revoke Hopkins's probation is against the logic and effect of the facts and circumstances before the court.

The record indicates that the trial court had previously allowed Hopkins multiple opportunities to change his behavior by ordering probation rather than incarceration and by not revoking Hopkins's probation after he committed previous violations. Hopkins, however, continued to show a complete disregard for both the conditions of his probation and the laws of this state by committing new criminal offenses and violating the terms of his probation. In light of Hopkins's continued disregard for the terms of his probation and the laws of this state, we cannot say that the trial court's decision is against the logic and effect of the facts and circumstances before the court. The trial court did not abuse its discretion in revoking Hopkins's probation.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.