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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTONIO D. CHANDLER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0612-CR-559

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APPEAL FROM THE LAKE COUNTY SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0411-FB-00097

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**OCTOBER 15, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Antonio D. Chandler appeals the trial court's revocation of his probation. We affirm.

## ISSUE

The sole issue is whether the trial court abused its discretion by ordering Chandler to serve his four-year suspended sentence.

## FACTS AND PROCEDURAL HISTORY

In November 2004, the State charged Chandler with three counts of robbery, each as a Class B felony. Chandler entered into a written plea agreement, wherein he agreed to plead guilty to an amended count of robbery as a Class C felony in exchange for the State's dismissal of the remaining two robbery charges and recommendation that Chandler serve a four-year sentence, all of which would be suspended to probation. In April 2005, the trial court accepted the plea agreement and sentenced Chandler, pursuant to the plea agreement, to four years suspended to probation.

On December 30, 2005, the State filed a Petition to Revoke Probation, in which it alleged that Chandler had failed to report to the probation department and failed to pay probation user fees. On February 23, 2006, the trial court held a revocation hearing, during which Chandler asked the trial court to leave him on probation and presented testimony from his family members, who indicated that they would help Chandler report to his probation meetings and pay his fees. Chandler's probation officer informed that trial court that she had given Chandler chances to comply with his probationary terms before she filed the revocation petition and that "probation [was] not apt to receive him

back.” Appellant’s Appendix at 63. The trial court told Chandler that it was going to “work with [him] and get [him] to do some other constructive things with [his] life” and warned him that the court would have to put him in jail if he did not follow the rules of probation. *Id.* at 65. The trial court continued the matter for a status hearing on May 25, 2006, released Chandler from jail, and instructed him to report to probation with the additional condition that he obtain counseling.

On April 4, 2006, the State filed a Second Petition to Revoke Probation, in which it alleged that Chandler had violated probation by failing to pay probation user fees and by being arrested on April 2, 2006, for driving with a suspended license with a prior conviction, a Class A misdemeanor, and operating a motor vehicle by an unlicensed driver, a Class C misdemeanor.<sup>1</sup> On April 27, 2006, the trial court held a revocation hearing, during which the State agreed to withdraw the revocation allegation regarding Chandler’s arrests. The trial court left Chandler on probation, released him “on [his] own recognizance” with instructions for him to start paying his fees, ordered him to report to the probation department, and continued the matter until the May 25, 2006, status hearing. *Id.* at 67.

The May status hearing was reset multiple times, and on September 6, 2006, the State filed an Amended Petition to Revoke Probation, in which it alleged that Chandler had violated probation by: (1) failing to pay probation user fees and court costs; and (2)

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<sup>1</sup> The record does not explain how Chandler could have been charged with both operating while never receiving a license and operating with a license that had been suspended.

engaging in criminal activity when he was charged with driving while suspended with a prior conviction, a Class A misdemeanor; operating a motor vehicle without ever receiving a license, a Class C misdemeanor; and speeding on September 5, 2006.

On September 27, 2006, the State filed a Second Amended Petition to Revoke Probation, alleging that, in addition to the allegations in the September 6th revocation petition, Chandler violated probation by: (1) engaging in additional criminal activity when he was charged with driving while suspended with a prior conviction, a Class A misdemeanor, and having an expired license plate, a Class C infraction on September 8, 2006; (2) failing to attend a scheduled probation appointment; and (3) failing to enroll in counseling as ordered by the trial court on February 23, 2006.

On October 5, 2006, the trial court held a probation revocation hearing on the second amended revocation petition. Chandler admitted that he violated probation as alleged but asked the trial court to consider his “extenuating circumstances” with regard to his violations.<sup>2</sup> *Id.* at 87. During the hearing, Chandler’s probation officer pointed out that the trial court had been repeatedly dealing with Chandler since he started probation and recommended that the trial court order Chandler to serve his entire four-year suspended sentence. When questioning Chandler about his probation violations, the trial court said, “What am I going to do with you? You know it’s pretty bad when we get tired and just throw up our hands and say forget it?” *Id.* at 92. The trial court determined that

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<sup>2</sup> Chandler argued that he failed to go to his probation appointment because his grandmother had a heart attack or stroke and that he committed the driving offenses because he was asked to go to the pharmacy to get a prescription for his grandmother.

Chandler violated probation and initially considered sentencing Chandler to sixty days in the Lake County Jail. After the trial court learned that Chandler's probation was not finished until April 8, 2009, the trial court stated:

You've got a long time to go. Do you want to keep coming back and forth messing around with this, come messing with me all the time or do you just want to go on and go to jail and get through with it? . . . Because it might be easier if you just go ahead and do your time and then we're through with each other because I've got a feeling you're gonna [sic] be back and forth.

*Id.* at 95. The probation officer suggested that, as an alternative, the trial court could see if Chandler qualified for Community Corrections. The trial court revoked Chandler's probation and postponed imposing a sentence until Chandler had a placement evaluation by Community Corrections. Chandler did not qualify for Community Corrections, and on October 24, 2006, the trial court ordered Chandler to serve his previously suspended four-year sentence and unsatisfactorily discharged him from probation.

#### DISCUSSION AND DECISION

Chandler argues that the trial court abused its discretion by ordering him to serve his four-year suspended sentence. We review a trial court's sentencing decision in probation revocation proceedings 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. *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006).

"Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." *Brabandt v. State*, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). 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.” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*).

Pursuant to Indiana Code § 35-38-2-3(g), after finding that a person has violated a condition of his probation, the trial 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.

Ind. Code § 35-38-2-3(g). “[U]ltimately it is the trial court’s discretion as to what sanction to impose under th[is] statute.” *Abernathy*, 852 N.E.2d at 1022.

Chandler does not allege that the trial court improperly found him to be in violation of the terms of his probation. He also does not dispute that the trial court had statutory authority to order execution of his entire four-year suspended sentence. Instead, Chandler argues that the trial court abused its discretion by ordering him to serve his four-year suspended sentence because his probation was revoked based on “lower-grade violations” and that the trial court should have imposed the sixty-day sentence that it had initially pondered. Appellant’s Brief at 5. We disagree.

Here, Chandler admitted that he violated his probation by failing to report to the probation department, failing to enroll in counseling, failing to pay probation and court fees, and violating the law by committing additional offenses. As reflected by the record

before us, the trial court gave Chandler ample opportunities to comply with the terms of his probation, but Chandler repeatedly fell short. Furthermore, the presentence investigation report (“PSI”) indicates that in December 2003, Chandler had a deferred prosecution for operating a motor vehicle by an unlicensed driver and that in December 2004, Chandler was convicted of operating a motor vehicle by an unlicensed driver and ordered to obtain a valid license, which he apparently never did. The PSI also indicates that Chandler, who was twenty-one years old at the time of the revocation hearing, had previously violated probation as a juvenile. Under these facts and circumstances, we conclude the trial court acted well within its discretion when it ordered Chandler to serve his previously suspended four-year sentence.

#### CONCLUSION

For the foregoing reasons, we affirm the trial court’s revocation of Chandler’s probation.

Affirmed.

BAKER, C.J., and SHARPNACK, J., concur.