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IN THE
COURT OF APPEALS OF INDIANA

GORDON ARMOUR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0905-CR-301
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0711-FC-317

January 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Gordon Armour appeals the revocation of his home detention and suspended sentence. Armour raises two issues, which we revise and restate as follows:

I. Whether the evidence is sufficient to support the revocation of his home detention and suspended sentence; and

II. Whether the trial court abused its discretion by ordering Armour to serve the balance of his previously-suspended sentence in the Department of Correction.

We affirm.

The facts most favorable to the revocation follow. On February 11, 2008, Armour pled guilty to one count of non-support of a dependent child as a class C felony. On March 10, 2008, Armour was sentenced to eight years with two years to be served on in-home detention and the remaining six years suspended to probation. Armour was ordered to continue making child support payments and to pay fees for his in-home detention. Armour was assigned to the HOCH Correctional Consultants and Services-Home Detention Program for his in-home detention.

On July 14, 2008, the probation department filed a Notice of Violation of Suspended Sentence because Armour was late in making a child support payment. On August 25, 2008, the court continued the matter indefinitely. The probation department subsequently requested that the trial court set an evidentiary hearing. A hearing was held on November 3, 2008, and Armour showed "by way of [a] check stub that money [was] directly being taken out of his check." Appellant's Appendix at 5. The trial court continued the matter "until further order," and Armour was returned to in-home detention. Id.

On December 11, 2008, the probation department filed a second Notice of Violation of Suspended/Executed Sentence. The notice alleged violations of the following conditions of Armour's suspended sentence: (a) that Armour had failed "to pay child support as ordered . . . ($36 per week plus $10 per week on arrearage);" (b) that Armour had "on/about 12/01/08 . . . tested positive for the presence of Cocaine Metabolites;" and (c) that "[a]s of 12/10/08, [Armour was] in arrears for In-Home Detention fees due to HOCCS-HDP in the amount of $1,000.00." Id. at 23. On February 9, 2009, an evidentiary hearing was held, and Armour admitted to having used cocaine and to being in arrears on his in-home detention payments. The trial court found that Armour was "not making enough money to pay [his] child support but [he was] paying child support." Transcript at 35. The trial court decided to "give [Armour] another chance," and keep Armour on in-home detention. Id.

On March 21, 2009, Armour was away from his home from 6:27 p.m. until 9:54 p.m. Armour was also absent from his home on March 22, 2009 from 12:12 p.m. until 3:23 p.m. and also from 5:41 p.m. until 6:08 p.m. On Monday, March 23, 2009, Armour came into the office for his in-home detention and told Eric Hoch, the owner and operator of the in-home detention program, that he had been working, but Armour "provided no verification." Id. at 46. Armour did not have authorization to be away from his house during those time periods, and he never provided Hoch or anyone else at the center any documentation as to his whereabouts during those time periods. Also, Armour had still not been paying his in-home detention fees. With regard to Armour's child support

payments, Armour had been making payments on one of his two support orders, but he had not been paying on the other order.

On March 26, 2009, the probation department filed a third Notice of Violation of Suspended/Executed Sentence. The notice stated that on March 24, 2009, HOCH Correctional Consultants and Services-Home Detention Program filed a Notice of Violation alleging that:

> i) [Armour] was absent from his residence without authorization on Saturday, March 21, 2009, from 18[:]27 to 21[:]54 hours;
> ii) [Armour] was absent from his residence without authorization on Sunday, March 22, 2009, from 12[:]12 to 15[:]23 hours and from 17[:]41 to 18[:]08 hours;
> iii) [Armour] has failed to be in strict compliance as ordered by the Court on February 9, 2009;
> iv) That as of 3/24/09, [Armour] is in arrears for Home Detention fees in the amount of $1,751.00.

Appellant's Appendix at 27. Additionally, the notice of violation alleged that Armour violated the conditions of his suspended sentence because he failed to "[p]ay child support in an amount ordered by any court and provide written verification of compliance to the Probation Department." Id.

On April 20, 2009, the trial court held an evidentiary hearing on the notice of violation. The trial court found that Armour violated the conditions of his probation because he was absent from his home detention without permission, he was behind on his child support payments, and he was in arrears on his home detention fees. The court then ordered Armour to serve the balance of his previously-suspended sentence in the Department of Correction.

I.

The first issue is whether the evidence is sufficient to support the revocation of Armour's home detention and suspended sentence. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). "Rather, placement in either 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). For the purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program such as home detention the same as we do a probation revocation hearing. Id. (citing Cox, 706 N.E.2d at 549). The State must prove a probation violation by a preponderance of the evidence. Parker v. State, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997) (citing Braxton v. State, 651 N.E.2d 268, 270 (Ind. 1995), reh'g denied). On review, we neither weigh the evidence nor judge the credibility of witnesses. Id. We look only to the evidence most favorable to the State. Id. So long as substantial evidence of probative value exists to support the trial court's finding that a violation occurred, we will affirm the judgment. Id. 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).

Armour argues that "[b]ased on the evidence, the State failed to prove by a preponderance of the evidence that Armour violated the terms of In-home Detention." Appellant's Brief at 9. Armour acknowledges Hoch's testimony which indicated that Armour was behind on his home detention fees and was absent without authorization.

Armour then points to his own testimony and that of his mother which indicated that he was at church or working during the times in question. Armour's argument is merely an invitation to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

Here, the facts most favorable to the revocation reveal that on March 21, 2009, Armour was away from his home from 6:27 p.m. until 9:54 p.m. Armour was also away from home from 12:12 p.m. until 3:23 p.m. and also from 5:41 p.m. until 6:08 p.m. on March 22, 2009. Armour did not have authorization to be away from his house during those time periods, and he never provided Eric Hoch or anyone else at the in-home detention center any documentation as to his whereabouts during that time. As previously mentioned, the violation of a single condition of probation is sufficient to revoke probation.

We therefore conclude that the State presented sufficient evidence that Armour violated the terms of his in-home detention and suspended sentence. See Kuhfahl v. State, 710 N.E.2d 200, 201 (Ind. Ct. App. 1999) (holding that the evidence was sufficient to revoke defendant's probation and the defendant's argument was simply to ask this court to reweigh the evidence and the credibility of the witnesses).

II.

The second issue is whether the trial court abused its discretion by ordering Armour to serve the balance of his previously-suspended sentence in the Department of Correction. Armour argues that "[t]he evidence established that Armour was working

prior to the filing of the Notice of Termination of In-home Detention . . . . [and] also showed that Armour was substantially complying with paying child support." Appellant's Brief at 10. Armour concludes that "[b]ased on the evidence that he was working and complying with all other terms of probation the Court abused its discretion by sending Armour to prison." 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; 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) (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 (citation omitted). The Court explained that:

> Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If 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 before the court. Id. (citation omitted). 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 notice of violation filed by the probation department on March 26, 2009 was the third notice filed against Armour in less than nine months. Only the month before, on February 9, 2009, at the hearing on Armour's second notice of violation, he admitted to having used cocaine and to being in arrears on his in-home detention payments. The trial court, though, decided to "give [Armour] another chance," and keep Armour on in-home detention. Transcript at 35. Then, at the hearing on the third violation on April 20, 2009, the court stated:

> Mr. Hoch doesn't run a free in-home detention program. The man is a business man and . . . Armour has made a mockery of the obligation he has to this court system through it's [sic] agent of Mr. Hoch and the Court has no option at this point other than, and he's absent without permission, and the Court has no choice but to send him to the Department of Correction and do his time and then we'll be done with it.

Id. at 83.

Given the circumstances, we cannot say that the trial court abused its discretion in ordering Armour to serve the balance of his previously-suspended sentence and in-home detention in the Department of Correction. 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 previously suspended sentence), trans. denied.

For the foregoing reasons, we affirm the trial court's revocation of Armour's home detention and suspended sentence.

Affirmed.

MATHIAS, J., and BARNES, J., concur.