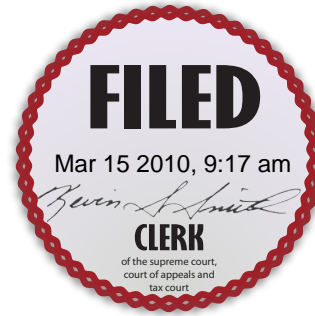


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LONDON HOOD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A05-0912-CR-678

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0809-FB-557

March 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

London Hood appeals the revocation of his probation. Hood raises two issues which we revise and restate as:

- I. Whether the evidence is sufficient to revoke Hood's probation; and
- II. Whether the trial court abused its discretion by ordering Hood to serve the entire portion of his previously suspended sentence.

We affirm.

The facts most favorable to the probation revocation follow. On or about February 21 or 22, 2008, Hood broke and entered the home of his grandfather and took his grandfather's handgun. On March 9, 2009, Hood pled guilty to burglary as a class B felony and theft as a class D felony. As part of the plea agreement, the State dismissed one count of carrying a handgun without a license as a class C felony. Hood was sentenced to six years for burglary and eighteen months for theft, and the sentences were ordered to run concurrently. Hood received 360 days executed in the Department of Correction, and the remainder of the sentence was suspended to probation. Hood was then released for time served. Hood was also ordered to pay his grandfather \$500 in restitution for the handgun unless the handgun was recovered and returned to Hood's grandfather.

At some point, Antonio Thompson, whose motor scooter had been stolen, learned from someone that his scooter had been seen at "Shack's house." Transcript at 42. Thompson went over to Shack's house, which was also where Hood was "stay[ing]" at the time. Id. at 43. Shack told Thompson that Hood stole the scooter, and Thompson

waited for Hood to return to the house. When Hood returned riding the scooter, Thompson confronted Hood about it. Hood “got off” of the scooter, and Thompson rode the scooter home. Id.

Later, Thompson’s scooter was stolen again. At some point in April 2009, somebody called Thompson and told him that they had “seen [his scooter] on 25th and Lincoln.” Id. at 45. Thompson went to the address and found the scooter on the porch. Thompson called the police. Thompson spoke to Curtis Emmert who told Thompson that Hood had sold him the scooter for a “hot boy tatoo [sic].” Id. Around that time, Officer Brett Webb of the Anderson Police Department arrived at the home on Lincoln Street.

Thompson told Officer Webb that Hood had stolen the scooter. Officer Webb looked up Hood’s address and “came up with [Hood’s] name over on Chase Street,” which was nearby. Id. at 35. Officer Eugene Rodgers went over to the Chase Street address and “approached [Hood] on the street.” Id. Hood then “took off on foot” and headed westbound towards Lincoln Street. Id. At that time, Officers Brian Gerhke and Matt Garrett also came to assist. When Hood ran across Lincoln Street, Thompson “pointed at [Hood] and said that’s the . . . person who stole my [scooter].” Id.

Officer Garrett located Hood at the intersection of 22nd Street and Morton Street, and Officer Gerhke and Officer Rodgers “gave chase in that foot pursuit.” Id. at 31. At some point, Officer Gerhke became injured during the foot pursuit and was unable to continue. Id. Officer Webb pulled up in his car to Officer Gerhke, who said “he was fine,” and Officer Gerhke pointed “towards [Hood] who was running up into a wooded

area over there in the 1700 block of Morton Street.” Id. at 36. Officer Webb and other officers arrested Hood on the 1700 block of Morton Street.

On June 19, 2009, the probation department filed a Petition for Violation of Probation. The petition charged that “ON OR ABOUT APRIL 25, 2009 . . . [Hood] EXERTED UNAUTHORIZED CONTROL OVER PROPERTY, BELONGING TO ANTONIO THOMPSON, TO WIT: A MOTORIZED SCOOTER. ON OR ABOUT APRIL 25, 2009 . . . [Hood] DID THEN AND THERE KNOWINGLY AND INTENTIONALLY RESIST LAW ENFORCEMENT”¹ Appellant’s Appendix at 16. On July 6, 2009, a hearing was held on the petition, and the trial court found that Hood “violated the terms and conditions of his probation.” Id. at 3. On July 13, 2009, a sanctions hearing was held and the trial court ordered Hood to serve “the balance of his 6 year sentence” in the Department of Correction. Id. At the sanction hearing, the following colloquy took place:

JUDGE: Okay. There’s an interesting entry in the Court’s record for March the 9th. Let me read that to everybody. It says, “Restitution is owed to Robert Hood, Sr. in the amount of five hundred dollars (\$500.00). If the stolen firearm is recovered, restitution will not be owed by the defendant.” Okay, now that’s a term and condition of your probation. So was the stolen firearm recovered, sir?

[Hood]: Not to my knowledge.

¹ The petition also charged that “ON OR ABOUT APRIL 14, 2009 . . . [Hood] DID KNOWINGLY BREAK AND ENTER THE DWELLING OF ANOTHER PERSON . . . [and Hood] DID KNOWINGLY TOUCH [that person] IN A RUDE, INSOLENT, OR ANGRY MANNER” Appellant’s Appendix at 15. The trial court noted regarding these charges that “I would say that the record is a little bit deficient on that one,” and it did not base the revocation of Hood’s probation on these charges. Transcript at 49.

JUDGE: Alright. Was the five hundred dollars (\$500.00) that I ordered paid to Robert Hood, Sr. paid?

[Hood]: No, sir.

* * * * *

JUDGE: One of the reasons that the [other charge] was dismissed was based on your promise to make restitution. . . . Alright, so one of the reasons that you were given this tremendous break was so you could pay your grandpa back for the value of the firearm that you took from him without permission and then whatever happened to the firearm happened. I don't know what happened, and apparently you don't know what happened either because you can't get it back. That serious charge is dismissed. What I'm trying to tell you, sir, is you got your break back in March. I don't think you're taking us seriously at all. Not only did you steal this man's [Scooter] once, but you stole it twice. Not only did you run from the police, but an officer was injured trying to capture you because you were running from the police after it had been reported that this man is the person who stole my [Scooter]. . . . I have not heard one single word of apology or your feelings of sorrow because this officer got hurt. . . . And while you're on probation, the probation you got so you could pay your grandpa back, instead of working and earning money to pay him back, you're out acting a fool, stealing other people's property and running from the police. You're not gonna get work release, sir. You're gonna go where you should of gone the first time. You mistake kindness for weakness, sir. We'll not make that mistake again. . . . If you would of [sic] paid your grandpa twenty-five bucks, at least you made an effort. You did nothing. In addition to doing nothing, you're out stealing stuff, running from the cops. Sir, I think you have a total and complete disdain for authority and you don't give a hoot what any of us say.

Transcript at 58-60.

I.

The first issue is whether the evidence is sufficient to revoke Hood's probation. Probation is an alternative to commitment in the Department of Correction, and it is at the sole discretion of the trial court. Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App.

2007) (citing Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). A defendant is not entitled to serve a sentence in probation. Id. Rather, probation is a “matter of grace” and a “conditional liberty that is a favor, not a right.” Id. (quoting Cox, 706 N.E.2d at 549). A revocation hearing is in the nature of a civil proceeding, so the alleged violation need be proven only by a preponderance of the evidence. Id. (quoting Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992), cert. denied, 508 U.S. 922, 113 S. Ct. 2373 (1993)). If there is substantial evidence of probative value to support the trial court’s decision that the probationer is guilty of any violation, revocation of probation is appropriate. Id. We neither reweigh the evidence nor judge the credibility of the witnesses. Meniffee v. State, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992), clarified on denial of reh’g, 605 N.E.2d 1207 (1993). Evidence of a single probation violation is sufficient to sustain a revocation of probation. Id.

The State must provide written notice of the claimed violations in compliance with the probationer’s due process rights. Isaac, 605 N.E.2d at 148 (citing Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 1760 (1973)). However, the State need not show that a defendant was convicted of a crime in order for the trial court to revoke probation. Lightcap, 863 N.E.2d at 911. Although an arrest standing alone does not necessarily support a revocation of probation, where there is evidence submitted at the hearing from which the trial court could find that an arrest was reasonable and that there is probable cause for belief that the defendant violated a criminal law, revocation of probation is permitted. Id.

Hood argues that although the charges in the probation revocation petition do not mention a failure to pay his grandfather restitution, “[t]he comments by the trial court strongly suggest [] that the failure to pay restitution to his grandfather for the pistol [Hood] had stolen played a significant role in deciding for a sanction of full revocation.” Appellant’s Brief at 6. Hood argues that “[p]robation may not be revoked for uncharged action.” Id. at 3. The statements of the trial court, however, demonstrate that although the trial court noted that Hood’s sentence was *initially* suspended to probation so that Hood might make restitution to his grandfather, the trial court revoked Hood’s probation based upon the fact that Hood stole Thompson’s scooter and ran from the police which resulted in the injury of one of the officers.

The trial court noted that the trial court dismissed a charge for carrying a handgun without a license as a class C felony, and that “one of the reasons that [Hood was] given this tremendous break was so [he] could pay [his] grandpa back.” Transcript at 59. Thus, the trial court stated, Hood “got [his] break back in March.” Id. Then, just over a month after getting this “break,” “while [Hood was] on probation, the probation [Hood] got so [he] could pay [his] grandpa back, instead of working and earning money to pay him back, [Hood was] out acting a fool, stealing other people’s property and running from the police.” Id. at 60. Thus, the trial court clearly indicated that Hood’s probation was revoked based upon the theft of Thompson’s scooter and the fact that Hood ran from the police.

Moreover, even if the trial court did revoke Hood's probation based in part on Hood's failure to pay his grandfather restitution, a violation for which Hood did not receive notice for purpose of the probation revocation hearing, any such error was harmless under the circumstances because Hood was found to have stolen Thompson's scooter and resisted law enforcement by running from the police, violations for which Hood did receive notice, and "proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation." Bussberg, II v. State, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), reh'g denied, trans. denied.

Therefore, we conclude that the trial court did not err in revoking Hood's probation. See, e.g., Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005) (holding that the trial court did not err in revoking defendant's probation because the trial court followed the proper procedures), trans. denied.

II.

The next issue is whether the trial court abused its discretion by ordering Hood to serve the entire portion of his previously suspended sentence. Hood argues that "[a] number of authorities recommend the use of actions less than incarceration in response to probation violations." Appellant's Brief at 8. Hood argues that "[t]he sink or swim approach where a youthful offender is turned loose is an invitation to disaster for the defendant," and that "[i]t is unrealistic to believe that many such defendants would successfully complete probation without any missteps." Id. Finally, Hood argues that

“[a] one strike and you are back in prison philosophy is overly punitive and does nothing to give the offenders the assistance they need to reintegrate into society.” 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:

- (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). 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:

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. 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). The “[c]onsideration and imposition of any alternatives to incarceration is a ‘matter of grace’ left to the discretion of the trial court.” Monday v. State, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996).

Here, the trial court sentenced Hood to six years in the Department of Correction, and the balance of his sentence was suspended to probation after time served. Less than two months after Hood’s sentencing hearing, the State filed its Petition for Violation of Probation alleging that Hood had stolen Thompson’s scooter and resisted law enforcement. After a hearing on the issue, the trial court found that Hood had indeed stolen the scooter and resisted law enforcement. Also, the trial court found that Hood’s resisting caused one of the officers to become injured. Finally, the trial court noted that Hood had already received a “break” at his guilty plea hearing when the State dropped a charge for carrying a handgun without a license as a class C felony. Transcript at 59.

Given the circumstances, we cannot say that the trial court abused its discretion in ordering Hood to serve the entire portion of his previously suspended sentence. See Wilkerson v. State, 918 N.E.2d 458, 464 (Ind. Ct. App. 2009) (holding that the trial court did not abuse its discretion in ordering probationer to serve the balance of his previously-

suspended sentence in the Department of Correction); 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 Hood's probation.

Affirmed.

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