

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.

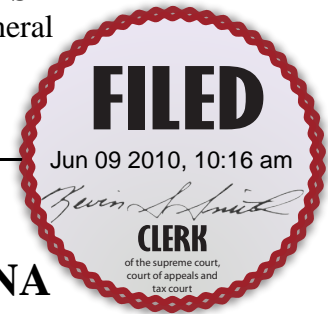
ATTORNEY FOR APPELLANT:

PATRICIA CARESS McMATH
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN T. HUTSON, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 61A05-1002-CR-56

APPEAL FROM THE PARKE CIRCUIT COURT
The Honorable Sam A. Swaim, Judge
Cause No. 61C01-0005-CF-95

June 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Steven T. Hutson, Jr., appeals a trial court decision revoking his probation and executing the remaining 774 days of his suspended sentence for class C felony battery resulting in serious bodily injury. We affirm.

On May 1, 2001, Hutson pled guilty to class C felony battery resulting in serious bodily injury. The trial court sentenced him via plea agreement to eight years, with 562 days served and the remainder suspended to probation. The trial court also ordered him to pay restitution to his victim.

On March 24, 2003, Hutson violated his probation by committing the offenses of possession of cocaine, possession of marijuana, and maintaining a common nuisance. As a result, the trial court executed two years of his suspended sentence. On June 21, 2007, he admitted to violating his probation by committing battery and resisting law enforcement. This time, the trial court continued his probation under the same terms and conditions. On April 29, 2008, he admitted to a third probation violation, having tested positive for marijuana. As a result, the trial court executed one year of the remaining suspended sentence.

On January 31, 2009, Hutson committed class A misdemeanor driving while suspended. On April 22, 2009, the State filed a fourth probation violation notice. He admitted to the violation at a November 17, 2009 revocation hearing. On December 15, 2009, he filed a motion to withdraw his admission, but the trial court denied the motion and ordered the execution of the remaining 774 days of his sentence. This appeal ensued.

Hutson challenges the trial court's decision to revoke his probation. "Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court sets the conditions of probation; thus, the trial court may revoke probation if the defendant violates those conditions. *Id.* As such, we review probation revocation decisions for an abuse of discretion. *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.*

Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually has occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. Indiana has codified the due process requirements at Ind. Code § 35-38-2-3 by requiring that an evidentiary hearing be held on the revocation and providing for confrontation and cross-examination of witnesses and representation by counsel. When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation.

Cox v. State, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) (citations and quotation marks omitted).

Indiana Code Section 35-38-2-3(g) provides that the court may impose one or more of the following sanctions when it finds that a person has violated a condition of probation:

- (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.

Hutson committed four probation violations. Each of these involved the commission of criminal offenses, and in each instance, the court imposed one of the aforementioned sanctions, ranging from continuing Hutson's original probation terms to executing portions of his suspended sentence to now executing all of his remaining sentence. At sentencing and on appeal, Hutson has cited for consideration his restitution obligation, his offer of full-time employment, and his ability to pay child support. The payment of child support and restitution obligations is of great interest to society, but such interest must give way in situations such as this, where previous attempts at leniency have proven ineffective in deterring the defendant from committing further criminal acts. Thus, the trial court acted within its discretion in executing the remainder of Hutson's sentence. Accordingly, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.