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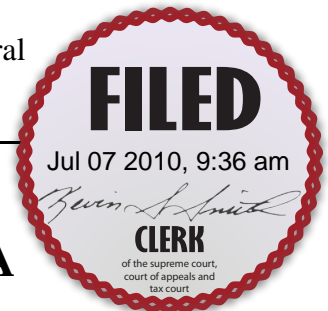
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**IN THE
COURT OF APPEALS OF INDIANA**

JONATHAN GRAVES,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

[illegible]

No. 49A02-0912-CR-1284

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey L. Marchal, Commissioner
Cause No. 49G06-0702-FC-32801

July 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jonathan Graves appeals from the trial court's order revoking his probation and requiring Graves to serve two years of a previously suspended sentence. Graves raises the following issue for our review: Did the trial court abuse its discretion by requiring Graves to serve two years of a previously suspended sentence upon finding that Graves violated the conditions of his probation?

We affirm.

On February 27, 2007, the State charged Graves with one count of class C felony child molesting, one count of class A misdemeanor resisting law enforcement, and one count of class B misdemeanor criminal mischief. Graves agreed to plead guilty to one count of class C felony child molesting, to have no contact with the victim, undergo H.I.V. testing, and register as a sex offender in exchange for dismissal of the remaining counts. Sentencing was left to the trial court's discretion.

The trial court accepted the plea agreement and sentenced Graves to three years executed with three years suspended to probation. On April 27, 2009, the probation department filed a notice of probation violation against Graves alleging that he had failed to comply with polygraph testing and had failed to comply with the court-ordered payment plan. At the conclusion of the hearing on the alleged violations, the trial court found that Graves violated his probation, but continued Graves's probation with strict compliance.

On October 28, 2009, the probation department filed a second notice of probation violation alleging that Graves had violated the conditions of his probation by failing to refrain from the use of alcohol, failing to maintain a single, verifiable residence, failing to refrain from inappropriate activity, and failing to pay court-ordered fees. During a court-

ordered polygraph examination, Graves disclosed that he had not stayed at his registered address every night, but had stayed overnight at his employer's house without his probation officer's knowledge. Graves told his probation officer that he had consumed alcohol on four separate occasions, most recently just a day before meeting with his probation officer. He stated that he visited three different strip clubs and received a lap dance at one club.

At his probation revocation hearing Graves admitted that he was aware of the terms and conditions of his probation, including the requirement that he refrain from the use of drugs or alcohol. Graves admitted that he drank alcohol, attended strip clubs where nude dancers perform, received a lap dance, and stayed overnight at a residence other than his registered address. The trial court found that Graves had violated three conditions of his probation and revoked Graves's probation. The trial court then ordered Graves to serve two years of his previously suspended sentence.¹

Graves appeals arguing that the trial court abused its discretion by failing to consider Graves's mental state when it ordered him to serve two years of his previously suspended sentence upon finding that he had violated his probation. We observe that 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 (Ind. 2007). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id.* at 188. Further, Ind. Code Ann. § 35-38-2-3(g) (West, Westlaw through 2009 1st Special Sess.) provides that upon finding a violation of probation, a trial court may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." The decision to

revoke probation is within the sound discretion of the trial court, and the trial court's decision is reviewed on appeal only for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008).

Graves cites to this court's opinion in *Patterson v. State*, 659 N.E.2d 220 (Ind. Ct. App. 1995), to support his argument. In *Patterson*, the defendant advanced the argument that because he suffered from a mental disease or defect he could not have formed the requisite intent for the crime that was the underlying basis for the revocation of his probation. Patterson argued that the trial court abused its discretion by revoking his probation. We held that "at a minimum, a probationer's mental state must be considered in the dispositional determination of a probation revocation proceeding." *Id.* at 222-23. The author of this opinion concurred and dissented in *Patterson* agreeing that Patterson's probation was correctly revoked, but disagreeing with the new requirement that a trial court consider the probationer's mental state when determining the appropriate disposition after finding a probation violation where there is no statutory requirement to consider aggravating and mitigating circumstances in probation revocation proceedings.

Be that as it may, Graves presented to the trial court his explanation of his reaction to the stressful factors present in his life at the time of the probation violations. The trial court, however, as the trier of fact, was free to reject Graves's version of what happened. *See Holeton v. State*, 853 N.E.2d 539 (Ind. Ct. App. 2006) (the trier of fact is to determine whether to reject a defendant's version of what happened). We cannot say that the trial court abused its discretion as the record reflects that the argument was before the trial court and

¹ The trial court did not find Graves violated his probation by failing to pay his court-ordered fees.

was rejected. On the record before us, the trial court was well within its discretion, upon finding the probation violations, to order that Graves serve two years of his previously suspended sentence.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.