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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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July 21, 2010

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Raymond E. Robinson (Robinson), appeals the trial court's Order revoking his probation.

We affirm.

ISSUE

Robinson raises one issue on appeal which we restate as follows: Whether the trial court abused its discretion when it ordered him to serve the balance of his four year sentence in the Department of Correction (DOC) after revoking his probation.

FACTS AND PROCEDURAL HISTORY

On February 25, 2008, the State filed an Information charging Robinson with operating a motor vehicle after forfeiture of license for life, a Class C felony, Ind. Code § 9-30-10-17 and operating a motor vehicle without financial responsibility, a Class A infraction, I.C. § 9-25-8-2(a)(1). On October 22, 2008, Robinson entered into a plea agreement with the State in which he pled guilty to the Class C felony in exchange for dismissal of the Class A infraction. On April 1, 2009, the trial court sentenced him pursuant to the terms of the plea agreement to four years in the DOC with two years served on electronic house arrest and two years served on supervised probation.

On July 10, 2009, the State filed a petition to revoke Robinson's home detention alleging that Robinson had engaged in an unlawful activity. Specifically, Robinson had been arrested and charged with operating a motor vehicle after forfeiture of license for life, a Class C felony, I.C. § 9-30-10-17, and operating a vehicle while intoxicated, a Class C

misdemeanor, I.C. § 9-30-5-2. On September 14, 2009, the trial court conducted a fact-finding hearing on the probation violation. During the hearing, Robinson admitted to the violation of the terms of his home detention by operating a motor vehicle after forfeiture of license for life and operating a vehicle while intoxicated. On November 9, 2009, the trial court ordered Robinson to serve the balance of his four year sentence in the DOC.

Robinson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Robinson contends that the trial court's decision to sentence him to an executed four year sentence at the DOC is inappropriate in light of the nature of the offense and the character of the offender. Robinson contends that the court, in reviewing his sentence after a probation revocation, should apply the standard set forth in Indiana Appellate Rule 7(B). This rule provides that a court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Prewitt v. State*, 878 N.E.2d 184 (Ind. 2007). However, the appellate evaluation of whether a trial court's sanctions are "inappropriate in light of the nature of the offense and the character of the offender" is not the correct standard to apply when reviewing a trial court's actions in a post-sentence probation violation proceeding. *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008). A trial court's action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. *Id.* Accordingly, the review and revise remedy of Indiana Appellate Rule 7(B) is not available. *Id.* Rather, we review a sentencing decision in

a probation revocation proceeding for an abuse of discretion. *Peterson v. State*, 909 N.E.2d 494, 499 (Ind. Ct. App. 2009). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Prewitt*, at 188.

Robinson now specifically challenges the trial court's decision to place him in the custody of the DOC rather than placing him again on home detention and supervised probation. When a trial court finds a person has violated a condition of probation, the trial court may continue the person on probation, extend the probationary period, or order execution of all or part of the sentence that was originally suspended. I.C. § 35-38-2-3(g). Here, we conclude that the trial court's execution of the entire four year sentence was not an abuse of discretion. After Robinson's conviction in the instant cause, the trial court placed him on electronic home detention. Three months after commencing his home detention, the State filed a petition alleging that Robinson was engaged in unlawful activities. Robinson admitted to the allegations of operating a motor vehicle after forfeiture of license for life and operating a vehicle while intoxicated. Robinson also admitted to having a serious alcohol problem and testified that he was seeking treatment.

Although Robinson argues that the trial court should now take into consideration his addiction to alcohol and place him in a treatment facility for alcohol abusers, the trial court reasoned that Robinson was already given ample opportunities to rehabilitate. During the sentencing hearing, the trial court noted his extensive criminal history consisting of ten felony convictions and twelve misdemeanor convictions. Despite this history, the trial court showed Robinson leniency by placing him on electronic home detention to seek treatment for

his alcohol addiction. Yet, he failed to comply with his requirements of his electronic home detention and operated a motor vehicle without license and operated a vehicle while intoxicated. Thus, instead of taking advantage of the trial court's leniency, Robinson proceeded to commit additional violations rather than seek out the treatment he needed. By his continual disregard for the law and lack of effort to seek treatment for his alcohol addiction, Robinson demonstrated that he has no intention to follow the law or improve his situation. Consequently, we find that the trial court did not abuse its discretion in revoking Robinson's probation and imposing an executed sentence in the DOC.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it ordered him to serve the balance of his four year sentence in the DOC after revoking his probation.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.