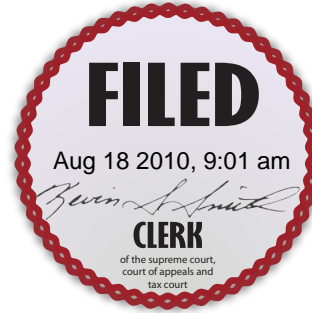


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WARDEL BROWN, III,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A05-1001-CR-2

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David Happe, Judge
Cause No. 48E01-0803-FD-84

August 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Wardel Brown appeals the revocation of his probation and the sentence imposed following the revocation of his probation. We affirm.

Issues

Brown raises two issues, which we restate as:

- I. whether the trial court properly revoked his probation;
and
- II. whether the trial court properly sentenced him
following the revocation of his probation.

Facts

In 2008, Brown was convicted of Class D felony failure to return to lawful detention and was sentenced to three years, with one year executed and two years to be suspended to probation. On November 11, 2009, Brown was the passenger in a car stopped by police. A big screen TV was in the backseat of the car, and two people were in the trunk of the car. Brown told police officers that he did not know there were people in the trunk. The people in the trunk told police officers that, when the driver stopped to pick up Brown, they offered to get into the trunk to make room for Brown. Both individuals told police officers that Brown knew they were in the trunk.

On November 13, 2009, the State filed a notice of violation of probation alleging that Brown committed a new offense of false informing in violation of the terms of his probation. At some point, Brown pled guilty to a criminal charge of false informing that had been filed in Anderson City Court so that he could “hurry up and get this over with . . .” Tr. p. 25. On December 14, 2009, following an evidentiary hearing, the trial court

found that Brown violated his probation. The trial court revoked Brown's probation and ordered him to serve the remainder of his suspended sentence. Brown now appeals.

Analysis

I. Revocation of Probation

Brown argues that the State did not present sufficient evidence to support the revocation of his probation. Because a probation revocation hearing is civil in nature, an alleged violation of probation only has to be proven by a preponderance of the evidence. Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). "When we review the determination that a probation violation has occurred, we neither reweigh the evidence nor reassess witness credibility." Id. Instead, we look at the evidence most favorable to the trial court's judgment and determine whether there is substantial evidence of probative value supporting revocation. Id.

Brown argues that the trial court improperly based the revocation of his probation on the testimony of Officer Joe Garrett, who was at the scene of the traffic stop. Officer Garrett testified that Brown stated he did not know the people were in the trunk and that the two occupants of the trunk separately stated Brown knew they were in the trunk. Contrary to this testimony, one of the occupants of the trunk testified that he did not tell Officer Garrett that Brown knew they were in the trunk. Brown is asking us to reweigh the evidence and assess witness credibility. We cannot do that.

Furthermore, at the probation revocation hearing, Brown testified that he had pled guilty to the false informing charge filed in the Anderson City Court. Regardless of his

reasons for pleading guilty, we cannot disregard his admission.¹ Based on Officer Garrett's testimony and Brown's own guilty plea, we conclude there was sufficient evidence to support the revocation of his probation.

II. Sentence

Brown also argues the trial court improperly ordered him to serve the remainder of his suspended sentence following the revocation of 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 determines the conditions of probation and may revoke probation if the conditions are violated." Id. (citing Ind. Code § 35-38-2-3). A trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. Id. "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances." Id. Upon the revocation of probation, the trial 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 year beyond the original probationary period; and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. I.C. § 35-38-2-3(g).

Brown argues that false informing is not one of the "worst offenses" a person can commit. Appellant's Br. p. 7. He also claims that it is only his second probation violation and that he was already punished for the offense of false informing when he

¹ The State does not argue that, because Brown pled guilty to the false informing charge, he is precluded from challenging the sufficiency of the evidence in the probation revocation proceeding.

was sentenced on that conviction. Even after considering these arguments, Brown has not established that the trial court abused its discretion by ordering him to serve the remainder of his suspended sentence.

Conclusion

There was sufficient evidence to support the revocation of Brown's probation and the trial court did not abuse its discretion by ordering him to serve the remainder of his sentence. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.