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IN THE
COURT OF APPEALS OF INDIANA

ROBERT COSLET,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1003-CR-147
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0506-FD-00071

SEPTEMBER 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant Robert Coslet appeals the sentence that the trial court imposed after revoking his probation. We affirm.

ISSUES

Coslet raises one issue for review, which we restate as whether the trial court abused its discretion while sentencing Coslet.

FACTS

On September 8, 2005, Coslet pleaded guilty to theft as a class D felony.[1] The trial court sentenced Coslet to a two-year sentence, which the trial court suspended and ordered Coslet to serve on probation. The trial court determined that Coslet was entitled to credit against his sentence for sixty days spent in confinement for this case.

On September 6, 2006, the State filed a Petition to Revoke Probation. Coslet did not appear for revocation proceedings, and the case did not move forward until Coslet was found. On January 26, 2010, the State filed an amended Petition to Revoke Probation. At a hearing on February 16, 2010, Coslet admitted to committing three violations of the terms of his probation. The trial court sentenced Coslet to serve two years in the Lake County Community Corrections Program, with credit for forty days spent in confinement for this case.

DISCUSSION AND DECISION

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).

[1] Ind. Code § 35-43-4-2.

Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id*. 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. *Prewitt*, 878 N.E.2d at 188. Accordingly, this Court will neither reweigh the evidence nor judge the credibility of the witnesses in a probation revocation matter. *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). Rather, we look to the evidence most favorable to the State. *Id.*

A trial court's sentencing decision for a probation violation is reviewable using the abuse of discretion standard. *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

At the time Coslet violated the terms of his probation in 2006, the governing statute provided, in relevant part:

> 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) (West 2004 & Supp. 2005).

In *Sandlin v. State*, 823 N.E.2d 1197, 1198 (Ind. 2005), a trial court revoked the appellant's probation and ordered him to serve the entire suspended sentence. On appeal, the appellant contended that the trial court sentenced him under the mistaken belief that it lacked the authority to sentence the appellant to less than the entire suspended sentence. *Id.* Our Supreme Court stated, "[a]bsent a fairly explicit statement to the contrary, we presume that a trial court is aware of its authority to order executed time following revocation of probation that is less than the length of the sentence originally imposed." *See id.* at 1198-1199. The Court examined the transcript and concluded that the trial court never indicated that it thought it was obligated to impose the entire suspended sentence. *Id.* at 1198.

In this case, at the revocation hearing, the State asked the trial court to sentence Coslet to serve his full suspended sentence of two years because Coslet had avoided appearing in the revocation matter for such a long period of time. In response, Coslet asked the trial court to sentence him to a minimum sentence, to be served in community corrections. The trial court sentenced Coslet as follows:

> The problem is twofold here, Mr. Coslet. There was an agreed sentence, and the court doesn't feel the court can modify that sentence without agreement from the state, which they're not agreeing to. Secondly, I'm less inclined to make that leap without their agreement, in light of the fact you've been gone for so long.
>
> * * *

> So, in light of that, after consideration of the arguments, the defendant is sentenced to two years in Lake County Community Corrections, with initial placement in Kimbrough Work Program.

Tr. pp. 12-13.

Coslet contends that the trial court erroneously sentenced him to the full amount of his suspended sentence because the trial court mistakenly believed that it lacked the authority to impose a lesser sentence without the State's agreement. We disagree. Viewing all inferences in the light most favorable to the State, the trial court's statement was an indication that it was not comfortable with a lesser sentence in the absence of the State's agreement, not an indication that the trial court believed that it lacked statutory authority to impose a lesser sentence unless the State concurred. Our conclusion is supported by the trial court's explanation that it was "less inclined" to impose a lesser sentence, which demonstrates that the trial court was well aware of the discretion afforded by Ind. Code section 35-38-2-3(g). Our conclusion is further supported by the trial court's decision that Coslet should serve his sentence in Lake County Community Corrections instead of being incarcerated, contrary to the State's request. We conclude that the trial court, like the trial court in *Sandlin*, was aware of its statutory sentencing authority and acted appropriately in sentencing Coslet to serve the entire suspended sentence in community corrections.

Next, Coslet contends that the trial court improperly calculated his credit time. Indiana Code section 35-50-6-3 sets forth in no uncertain terms that a person confined awaiting trial or sentencing is statutorily entitled to one day of credit for each day he or

she is so confined. *Weaver v. State*, 725 N.E.2d 945, 947-948 (Ind. Ct. App. 2000). Therefore, pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion. *Id.* at 948.

In this case, in the original sentencing order the trial court noted that Coslet was entitled to sixty days of credit time. When the trial court subsequently revoked Coslet's probation and sentenced him to serve two years in community corrections, the trial court awarded Coslet forty days of credit time. Coslet did not object at the sentencing hearing to being given forty, rather than sixty, days of credit time. Furthermore, Coslet did not present any evidence to the trial court, or in his Appellant's Brief in this appeal, as to whether sixty days or forty days is the correct amount of credit time. Under these circumstances, Coslet has waived this issue. *See Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002) (determining that an appellant had waived a challenge to his credit time by failing to object at sentencing and by failing to present sufficient information to determine the proper amount of credit time).

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur.