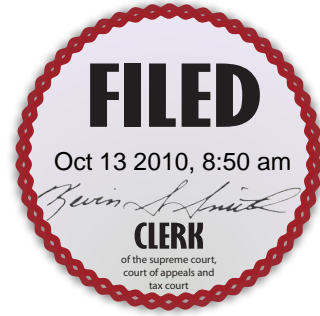


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER JAMES HOVIOUS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 79A02-1003-CR-354

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0612-FC-75

October 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Christopher Hovious appeals the trial court's revocation of his probation. We affirm.

Issues

Hovious 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 his probation revocation.

Facts

In October 2006, Hovious participated in an online chat room and initiated discussions regarding sexual acts with a person he thought was a thirteen-year-old girl, but the person was actually an undercover detective. He arranged to meet her but was arrested when he arrived at what he thought was her apartment. In December 2009, Hovious pled guilty to four counts of Class C felony child solicitation. The trial court sentenced Hovious to ten years with three years suspended to supervised probation and four years suspended to unsupervised probation. Hovious appealed his sentence, and this court revised his sentence to five years with one and one-half years suspended to supervised probation and one and one-half years suspended to unsupervised probation. Hovious v. State, No. 79A05-0712-CR-689, slip op. at 8 (Ind. Ct. App. 2008).

The conditions of Hovious's probation included the following:

23. You shall not access the internet or any other on-line service through use of a computer, cell phone, iPod, Xbox,

personal digital assistant (PDA), pagers, Palm Pilots, televisions, or any other electronic device at any location (including your place of employment) without prior approval of your probation officer. This includes any Internet service provider, bulletin board system, e-mail system or any other public or private computer network. You shall not possess or use any data encryption technique or program.

Appellant's App. p. 22.

On October 7, 2009, the State filed a petition to revoke Hovious's probation. The State alleged that Hovious had been using an unauthorized cell phone with internet access, that Hovious had accessed the internet, that Hovious had used the cell phone to access dating services, and that pictures of women showing their breasts were found on the cell phone.¹ After a hearing on the petition to revoke Hovious's probation, the trial court found that Hovious had used the cell phone to access the internet and that Hovious had "knowingly and repeatedly violated Special Probation Condition 23" regarding internet access. *Id.* at 253. The trial court revoked two years of Hovious's probation and ordered him to serve one year of supervised probation and four years of unsupervised probation.

Analysis

I. Probation Revocation

Hovious argues that the trial court improperly revoked his probation. Probation revocation is governed by Indiana Code Section 35-38-2-3. A probation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the

¹ Hovious's conditions of probation also required that he not possess obscene material. At the probation revocation hearing, the State conceded that the photographs were not obscene.

evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

On appeal, Hovious claims that the conditions of his probation did not require him to provide his probation officer with all of his cell phone numbers, that text messaging and adult telephone chat services were not prohibited by the conditions of his probation, and that his mother had accessed the internet with the cell phone.

The State presented evidence that Hovious had given his cell phone number to his probation officer, but Detective Garry Long of the Morgan County Sheriff's Department received a report that Hovious had a secret cell phone and that he was accessing the internet with it. Detective Long found that the cell phone was registered to Hovious's mother, and he called the phone several times. Each time a man answered the phone, and on one occasion, Detective Long asked the person's name, and he responded, "Chris." Tr. p. 17.

Hovious testified that he shared the phone with his mother but that he had the phone more than fifty-one percent of the time. Despite his claims that he shared the phone with his mother, the State admitted evidence that the phone was repeatedly used to participate in adult telephone chat services, and Hovious admitted that he participated in the adult chat services. Records admitted at the hearing showed more than 2700 text messages received in one month and more than 3100 text messages sent in the same

month. Hovious also claimed that his mother had used the internet access on the phone to post his resume and to access his Hotmail account to see if anyone had responded to his resume.

The State presented evidence that Hovious was using a cell phone and that the internet was accessed on that cell phone. The trial court did not find Hovious's explanation of the internet access usage by his mother credible and found that Hovious had used the cell phone to access the internet. Hovious is merely requesting that we reweigh the evidence and judge the credibility of the witnesses, which we will not do. We need not address Hovious's arguments that failing to provide his probation officer with his cell phone numbers, text messaging, and participating in adult telephone chat services did not violation the conditions of his probation because the trial court properly concluded that Hovious had accessed the internet in violation of the conditions of his probation. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). The State presented sufficient evidence to support the revocation of Hovious's probation.

II. Sentencing

Hovious argues that the sentence imposed following the revocation of his probation was an abuse of discretion. "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 impose one or more of the following sanctions: (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).

Hovious was originally sentenced to five years with one and one-half years suspended to supervised probation and one and one-half years suspended to unsupervised probation. The trial court revoked two years of Hovious’s probation and ordered him to serve one year of supervised probation and four years of unsupervised probation. The State presented evidence that, shortly after being released from prison, Hovious began using a cell phone with internet access provided by his mother. Although Hovious informed his probation officer of a different cell phone, he did not provide the probation officer with information regarding the cell phone provided by his mother. Hovious used this cell phone to access the internet in violation of the conditions of his probation. Also while on probation, Hovious failed to pay his child support; instead, he used money available to him from his unemployment and his mother to spend hundreds of dollars on adult telephone chat services, rent a video game system, and pay for cable television. Under these circumstances, the trial court did not abuse its discretion when it sentenced Hovious for his probation violation.

Conclusion

The trial court properly found that Hovious violated his probation and did not abuse its discretion when it sentenced Hovious for the probation violation. We affirm.

Affirmed.

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