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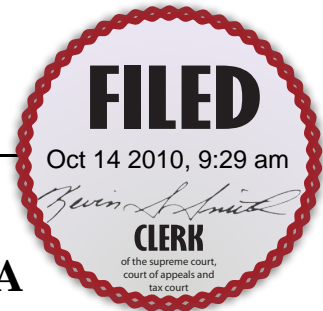
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**IN THE
COURT OF APPEALS OF INDIANA**



JARROD S. SNYDER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 57A05-1003-CR-155

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0904-FA-1

October 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Jarrold S. Snyder was addicted to methamphetamine and was charged with and convicted of drug crimes. After serving the executed portion of his sentence and while on probation, he struggled with his addiction, resulting in numerous probation violations. The trial court revoked his probation and ordered him to serve the entire suspended portion of his sentence. Snyder appeals, arguing that his sentence is unreasonable. We conclude that the trial court offered him abundant opportunities to reform his behavior during probation, and yet he was unable to do so. Therefore, we do not find his sentence unreasonable, and we affirm.

Facts

On March 1, 2007, a police officer stopped Snyder for a traffic infraction in Noble County, within 1000 feet of a family housing project, and discovered three grams of methamphetamine and two dextroamphetamine pills in a black cloth purse in a milkshake in Snyder's vehicle. On March 2, 2007, the State charged Snyder with class A felony possession of methamphetamine,¹ class C felony possession of a controlled substance,² class C misdemeanor possession of paraphernalia; and driving while suspended. Pursuant to a plea agreement, Snyder pled guilty to class A felony possession of methamphetamine and class C felony possession of a controlled substance in exchange for concurrent sentences of twenty years and four years, respectively, and with complete discretion left to the trial court to determine the duration of any suspended sentence.

¹ Ind. Code § 35-48-4-6(b)(3).

² Ind. Code § 35-48-4-7.

On July 10, 2007, the trial court sentenced Snyder to twenty years for the class A felony, all suspended except three and one-half years with three years' probation, and four years on the class C felony, all suspended except three and one-half years, to be served concurrently. While serving his sentence, Snyder completed a twelve-step Crystal Meth Anonymous Program and C.L.I.F.F. (Clean Lifestyle is Freedom Forever), a therapeutic community methamphetamine treatment program, as well as other life behavior courses. After serving the executed portion of his sentence, Snyder was released to probation.³

On February 5, 2009, Snyder's probation officer filed a probation violation report. On April 23, 2009, the Noble County drug court accepted Snyder into its program.⁴ On June 3, 2009, the trial court found that Snyder violated the terms of his drug court participation agreement. On July 29, 2009, the trial court again found Snyder in violation of his drug court participation agreement and ordered him to report to the Pilot House, a site providing emergency housing for homeless men.

On July 31, 2009, the Pilot House management ordered Snyder to leave the residence after he was late for curfew and tested positive for methamphetamine. Later that evening, Snyder admitted to a police officer that he had used methamphetamine that day. On August 1, 2009, Snyder was arrested for class A misdemeanor operating while intoxicated; class C misdemeanor operating while intoxicated with a controlled substance in the body

³ The record before us does not indicate when Snyder was released.

⁴ Drug courts (now problem solving courts) were governed by Indiana Code Chapter 12-23-14.5, which was repealed and replaced by Indiana Code Chapter 33-23-16 as of July 2010. Pub. Law 108-2010, § 10.

(methamphetamine); and class A misdemeanor driving while suspended. As a result of Snyder's July 31 and August 1 actions, the trial court ordered Snyder to remain in the Noble County Jail until he was accepted into a halfway house. On November 18, 2009, the trial court found that Snyder violated the drug court participation agreement and ordered him to write a letter of apology to his probation officer and to the Serenity House, a non-profit company operating drug abuse residential drug recovery homes, and to reside in a halfway house. On December 2, 2009, the trial court again found Snyder to be in violation of his drug court participation agreement and ordered him to write another letter of apology, attend six self-help meetings, and make-up missed meetings.

On January 6, 2010, Snyder tested positive for methamphetamine. He admitted that he used methamphetamine about two days before and had used a couple of times before that.

On January 9, 2010, Snyder tested positive for methamphetamine and tetrahydrocannabinol (THC). On January 15, 2010, the drug court filed a termination report. On January 27, 2010, the trial court held a hearing and terminated Snyder from the drug court program. On March 3, 2010, the trial court revoked Snyder's probation and ordered him to serve the suspended portion of his sentence, sixteen and one-half years.

Discussion and Decision

Snyder appeals the sentence imposed upon revocation of his probation. We observe that "[p]robation is a conditional liberty that is a privilege, not a right." *Hubbard v. State*, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997). Upon finding that one has violated a term of his or her probation, the trial court may revoke that person's probation. Ind. Code § 35-38-2-3(a). A

single violation is a sufficient basis for the revocation of probation. *Hubbard*, 683 N.E.2d at 622. When a person commits a probation violation, the trial court may do any of the following:

- (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.
- (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).⁵ We review a trial court's decision regarding the execution of a suspended sentence for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*.

Snyder argues that the execution of his sixteen and one-half year sentence is an abuse of discretion because he was only nineteen years old when he was arrested for the underlying offenses and was seriously addicted to methamphetamine. He indicates that before his arrest,

he had never had any treatment for his addiction, but he availed himself of the drug addiction treatment programs offered in prison. Finally, he asserts that drug addicts often have relapses and that while he was on probation his addiction got the better of him. We commend Snyder for undergoing treatment for his addiction while he was incarcerated, and we encourage him to continue to fight for his mental and physical health. While we are mindful of the difficulties involved in overcoming a drug addiction, it is impossible to overlook the numerous times that Snyder tested positive for methamphetamine and violated the terms of probation and his drug court participation agreement. Nevertheless, the trial court afforded him with many opportunities for a fresh start. Given the number of violations, the trial court had ample basis for its decision to order Snyder to serve his suspended sentence. Accordingly, we conclude that the trial court did not abuse its discretion in ordering Snyder to serve his entire sentence.

Affirmed.

⁵ Our supreme court has stated that “a trial court has the statutory authority to order executed time following revocation of probation that is less than the length of the sentence originally suspended, so long as, when combined with the executed time previously ordered, *the total sentence is not less than the statutory minimum.*” *Stephens v. State*, 818 N.E.2d 936, 942 (Ind. 2004) (emphasis added). In 2005, the General Assembly amended Indiana Code Section 35-38-2-3(g)(3) to explicitly provide that courts could order the execution of “all or part” of a suspended sentence. *Prewitt v. State*, 878 N.E.2d 184, 187 (Ind. 2007). The current version of Section 3(g)(3) does not include the restriction that the total sentence not be less than the statutory minimum. In *Podlusk v. State*, 839 N.E.2d 198, 202-3 (Ind. Ct. App. 2005), another panel of this Court reasoned that the specific rule in *Stephens* was not intended to apply to all probation revocation matters based on the supreme court’s rhetoric and the passage of the amended version of Section 3(g)(3), but expressed its desire for the supreme court to clarify the *Stephens* holding. Although the supreme court has not addressed this issue, the *Prewitt* court noted that “the legislative message of recent decades has been to encourage judicial flexibility.” *Id.* In the instant case, if the “statutory minimum” requirement of *Stephens* applies, then the trial court would have no choice but to order Snyder to serve the suspended portion of his sentence because the minimum sentence for a class A felony is twenty years. Ind. Code § 35-50-2-4. Because we find that the trial court did not abuse its discretion in ordering Snyder to serve the portion of his sentence that was originally suspended, we need not address whether the *Stephens* “statutory minimum” requirement survives the amendment of Section 3(g)(3).

FRIEDLANDER, J., and BARNES, J., concur.