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ATTORNEY FOR APPELLANT:

MARK I. COX

The Mark I. Cox Law Office, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

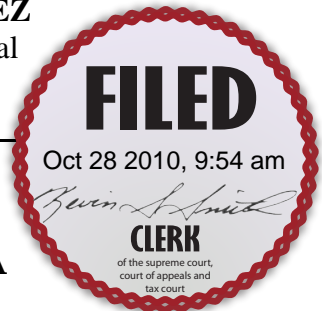
GREGORY F. ZOELLER

Attorney General of Indiana

ANGELA N. SANCHEZ

Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



MICAH D. POTTER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 89A05-1006-CR-391

APPEAL FROM THE WAYNE CIRCUIT COURT

The Honorable David A. Kolger, Judge

Cause No. 89C01-0906-FD-71

October 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Micah D. Potter appeals the execution of her previously suspended sentence upon the revocation of her probation.

We affirm.

The facts favorable to revocation are that in 2009, Potter pled guilty to theft, a class D felony. The trial court sentenced her to two years, with 610 days suspended to probation. She began probation on November 9, 2009. Potter was initially compliant with the conditions of her probation, but she began to violate the terms in January 2010. On March 10, 2010, the State filed a petition to revoke probation. Ultimately, Potter admitted all of the probation violations alleged in the petition to revoke, including: (1) failure to meet with her probation officer; (2) failure to attend required counseling or substance abuse treatment; (3) failure to perform the required community service; (4) quitting her job without obtaining the prior written consent of her probation officer; and (5) failure to pay court costs and probation-related fees. On May 19, 2010, following an admission and dispositional hearing, the trial court revoked probation and ordered execution of 600 days of Potter's previously suspended sentence, with probation to terminate upon her release from incarceration.

Potter contends the trial court erred in revoking her probation. Probation is a matter of grace and a conditional liberty that is a favor, not a right. *Cooper v. State*, 917 N.E.2d 667 (Ind. 2009). The trial court determines the conditions of probation and may revoke upon determining that those conditions were violated. *Id.* The decision to revoke probation is committed to the trial court's sound discretion. *Id.* We review its decision on appeal for abuse of that discretion. *Id.* When conducting our review, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of

the witnesses. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008). If there is substantial evidence of probative value supporting the determination that a defendant has violated any terms of probation, we will affirm the decision to revoke. *Id.*

Potter admitted that she violated the terms of her probation as alleged and thus does not challenge that finding. Rather, she contends there were compelling reasons for her noncompliance¹ and therefore the trial court should at the least have adopted the recommendation of her probation officer that she serve one year, after which probation would be terminated. The trial court considered the State's recommendation and Potter's explanations for noncompliance. It explained its decision as follows:

I guess I accept your explanations somewhat in this case for not paying the money. I don't understand why you wouldn't make your appointments. I don't understand why you wouldn't go to counseling. I – I don't understand the community service. None of these things require a penny from you and you still don't do it.

Transcript at 24. The court further elaborated: "To me it's inexcusable. You've been given every opportunity. I'm a big guy on giving second chances. ... It's just not the third, fourth, and fifth chances that I'm real big on." *Id.* at 25.

The court's rationale is as clear as it is reasonable. Potter's stated reasons for failing to comply with virtually all of the conditions of her probation, especially the non-financial ones, are not so compelling as to render the execution of her previously suspended sentence an abuse of discretion.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.

¹ Potter testified that she has three children aged ten or under, that she and one of those children had surgery during the relevant time period, and that she failed to meet with her probation officer because she was scared. We note, however, that Potter and her children lived with her parents.