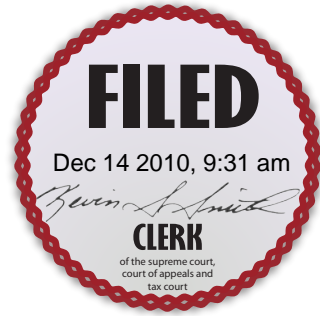


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JASON A. CHILDERS
Anderson, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CLAYTON FRAZIER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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) No. 48A02-1005-CR-549
)
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)

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle, III, Judge
Cause No. 48C01-0708-FD-417

December 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Clayton Frazier appeals the sentence imposed following the revocation of his probation. We affirm.

Issue

Frazier raises one issue, which we restate as whether the trial court abused its discretion when it ordered him to serve the remainder of his suspended sentence in the Department of Correction (“DOC”).

Facts

In 2007, Frazier pled guilty to Class D felony resisting law enforcement and Class A misdemeanor contributing to the delinquency of a minor. On the Class D felony charge, the trial court sentenced Frazier to thirty-six months, with eighteen months executed in the DOC and eighteen months suspended to probation. On the Class A misdemeanor charge, the trial court sentenced Frazier to twelve months and ordered that sentence to be served concurrent with the sentence on the felony charge.

On March 8, 2010, the State filed a notice of probation violation, alleging that Frazier violated the terms of his probation by committing the offenses of criminal trespass and possession of marijuana and by failing to report his arrest to the probation department within forty-eight hours. On March 18, 2010, the State filed an amended notice of probation violation to include an allegation that Frazier had committed battery. Following a hearing, the trial court determined that Frazier violated his probation by committing criminal trespass and battery. The trial court revoked Frazier’s probation and

ordered him to serve the suspended portion of his sentence in the DOC. Frazier now appeals.

Analysis

Frazier argues that the trial court abused its discretion when it ordered him to serve the remainder of his sentence in the DOC 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).

Frazier argues that the trial court abused its discretion because the criminal trespass and battery were only misdemeanor offenses and because this is the first time he was found to have violated his probation. Frazier also argues that when he committed the criminal trespass he thought he was prohibited from entering the apartment complex only on the night that he received a trespass warning and that he committed the battery in self-defense.

When sentencing Frazier on the probation revocation, the trial court observed that in only a short period of time Frazier was arrested for the criminal trespass and the battery and that it was clear the probation was not working. It was within the trial court's discretion to order Frazier to serve the remainder of his suspended sentence in the DOC, and Frazier has not shown that the trial court abused that discretion.

Conclusion

The trial court did not abuse its discretion in ordering Frazier to serve the remainder of his suspended sentence in the DOC. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.