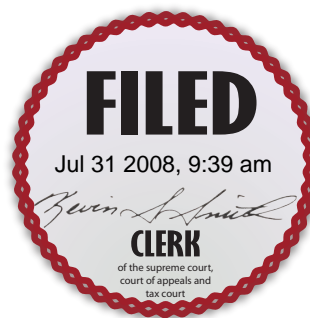


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JONATHAN BREWSTER,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0801-CR-66

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
The Honorable Steven Rubick, Master Commissioner
Cause No. 49G02-0408-FB-146048

July 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a probation revocation hearing, Appellant-Defendant Jonathan Brewster was found to be in violation of his probation imposed following his conviction for Class C felony Burglary.¹ The trial court revoked Brewster's probation and ordered him to serve his remaining previously suspended 730-day sentence in the Department of Correction ("DOC"). Upon appeal, Brewster argues that the trial court abused its discretion in rejecting his purported plea agreement for his probation violation and in revoking his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 25, 2005, Brewster was convicted of burglary as a Class C felony pursuant to a written plea agreement. The court sentenced Brewster to three years, with 338 days executed in the DOC and placed him on probation for 730 days.²

On July 1, 2006, Brewster was charged with Class C felony carrying a handgun without a license. On August 18, 2006, Brewster pled guilty to the charge through a written plea agreement, for which he was sentenced to two years executed in the DOC. Pursuant to the court's order, this executed sentence tolled Brewster's probation for his burglary conviction.

On or about November 20, 2007, Brewster was arrested and charged with possession of marijuana and resisting law enforcement, both Class A misdemeanors. At

¹ Ind. Code § 35-43-2-1 (2004).

² The burglary conviction abstract, from February 25, 2005, shows a sentence of 338 days executed and 757 days suspended, totaling three years. Under the additional comments section it is noted that the defendant is placed on probation for only 730 days.

the time of this arrest, Brewster had been released from the DOC on parole for his handgun conviction and was to resume his probation for the burglary conviction at the completion of his parole on June 29, 2008. On November 30, 2007, the State filed a Notice of Probation Violation against Brewster with respect to this arrest. Brewster subsequently pled guilty to possession of marijuana.

A probation violation hearing was held on December 21, 2007. At the hearing, Brewster's attorney reported to the court that she thought the two sides had come to an agreement, but then explained that Brewster was still confused as to this violation. The prosecutor called the Marion County probation supervisor of the court team, who testified that Brewster was in violation of his probation; defense counsel did not cross. Defense counsel subsequently informed the court that Brewster would like to accept the plea agreement, at which time the court explained that "that ship has sailed." Tr. p. 79. Brewster then testified on his own behalf, telling the court that his confused body language was only a result of him not understanding how he could be in violation of probation when he was only on parole, but that he wanted to take the State's plea agreement. The court rejected Brewster's alleged plea agreement and revoked his term of probation, ordering that his remaining 730 days be served in the DOC. Brewster now appeals.

DISCUSSION AND DECISION

Brewster makes two arguments on appeal, specifically that the trial court abused its discretion by rejecting his purported plea agreement and also that the trial court abused

its discretion by fully revoking his suspended sentence. We will address each argument in turn.

Probation is a matter of grace and is a conditional liberty that is a favor, not a right. *See Kincaid v. State*, 736 N.E.2d 1257 (Ind. Ct. App. 2000), *reh'g denied*. We review a trial court's decision to accept or reject a plea agreement for an abuse of discretion. *Badger v. State*, 637 N.E.2d 800, 803 (Ind. 1994). A trial court's discretion to accept or reject a plea agreement is very broad. *See Spencer v. State*, 634 N.E.2d 72, 74 (Ind. Ct. App. 1994), *trans denied*. Reversal is only appropriate where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Jennings v. State*, 723 N.E.2d 970, 972 (Ind. Ct. App. 2000).

Brewster argues that the trial court abused its discretion by considering his facial expressions and body language when rejecting his plea. We disagree. When Brewster's apparent plea agreement was presented to the trial court, the court noted that Brewster was "shaking his head, glowering at his attorney, [and] glowering at [the judge]." Tr. p. 82. Based on Brewster's demeanor, the trial court found no "meeting of the minds" and thus no agreement. Tr. p. 82. The trial court is not required to accept or approve the agreements negotiated between the parties. A trial judge may reject a guilty plea in the exercise of sound judicial discretion. *Snyder v. State*, 500 N.E.2d 154, 157 (Ind. 1986). Here, we conclude that the trial court was within its discretion to consider Brewster's demeanor with regards to the voluntariness of his plea agreement as a ground for rejecting the plea.

With respect to Brewster's second argument, the trial court has the discretion to revoke any conditional liberty granted through probation upon a showing of a probation violation, and order incarceration. *Monday v. State*, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996). One of the options available to a trial court when revoking a person's probation is to order the execution of the sentence that was suspended at the time of the initial sentencing. *Kincaid*, 736 N.E.2d at 1259. This court has consistently reviewed sentencing decisions for violations of probation utilizing an abuse of discretion standard. *See, e.g., Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005).

Under Indiana Code § 35-38-2-3(g)(3), a trial court, upon a finding of probation violation, is statutorily authorized to order the execution of all or part of the sentence that was suspended at the time of the initial sentencing. Accordingly, we find no abuse of discretion in the trial court's electing to order the execution of Brewster's entire suspended sentence.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.