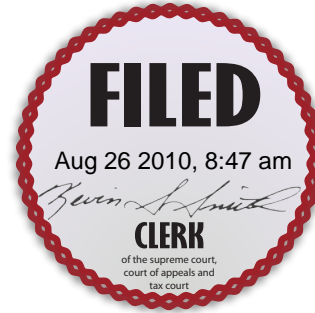


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO MOORE,)

Appellant/Defendant,)

vs.)

STATE OF INDIANA,)

Appellee/Plaintiff.)

No. 48A05-1002-CR-132

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0608-FB-297

August 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Antonio Moore appeals from the revocation of the probation ordered following his guilty plea to Class B felony Dealing in Cocaine. We affirm.

FACTS AND PROCEDURAL HISTORY

On April 9, 2007, Moore pled guilty to Class B felony dealing in cocaine, and the trial court sentenced him to fifteen years of incarceration with ten suspended to probation. On December 3, 2009, the State filed a notice of probation violation, alleging that Moore had violated the terms of his probation by committing Class A misdemeanor marijuana possession on or about October 16, 2009, and by his failure to timely report to the probation department, to timely obtain a substance abuse evaluation, and to maintain and verify employment. On December 31, 2009, the State filed an amended notice of probation violation, additionally alleging that Moore had, on or about October 16, 2009, committed Class A felony and Class B felony dealing in cocaine and an additional instance of Class A misdemeanor marijuana possession. On January 19, 2010, the trial court held an evidentiary hearing, after which it found all of the State's allegations to be true. The trial court ordered that all ten years of Moore's previously-suspended sentence be executed.

DISCUSSION AND DECISION

Probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Marsh v. State*, 818 N.E.2d 143, 146 (Ind. Ct. App. 2004) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). We review a trial court's probation revocation for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. If the trial court finds that the person violated a condition of probation, it may order the execution

of any part of the sentence that was suspended at the time of initial sentencing. *Stephens v. State*, 818 N.E.2d 936, 942 (Ind. 2004). Proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation. *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005).

I. Whether the State Produced Sufficient Evidence to Support a Finding that Moore Violated the Terms of his Probation

In determining whether there is sufficient evidence to support a probation revocation, we use the same standard of review as we do in any other sufficiency question. *Hensley v. State*, 583 N.E.2d 758, 759 (Ind. Ct. App. 1991). We consider only the evidence most favorable to the State, along with all relevant inferences to be drawn therefrom. *Id.* at 760. If there is substantial evidence which supports the trial court's judgment, we will affirm. *Id.*

Moore challenges only the trial court's finding that he failed to timely contact his probation officer and the alleged finding that he committed marijuana possession on December 4, 2009.¹ Moore, however, does not challenge the trial court's findings that he violated the terms of his probation by committing Class A felony and Class B felony dealing in cocaine and Class A misdemeanor marijuana possession, failing to timely obtain a substance abuse evaluation, and failing to maintain and verify employment. Even assuming,

¹ Two Anderson police officers provided testimony tending to prove that Moore committed dealing in cocaine and marijuana possession on October 16, 2009, and one officer provided testimony tending to prove that he also committed marijuana possession on December 4, 2009. At the evidentiary hearing, the prosecutor indicated that the second marijuana possession allegation added to the amended notice of probation violation referred to the events of December 4, 2009, even though the notice indicated that it occurred on October 16, 2009. Also at the hearing, the trial court stated on the record that it did not find that Moore had committed marijuana possession on December 4, 2009, although its order indicated that it had. We will assume that the trial court's written order was mistaken in this regard and that it did not find that Moore committed marijuana possession on December 4, 2009.

arguendo, that both of the challenged findings are unsupported by sufficient evidence, the trial court was fully justified in finding that Moore violated the terms of his probation based on any one of the remaining unchallenged allegations.

II. Whether the Trial Court Abused its Discretion in Ordering that Moore's Suspended Sentence be Fully Executed

Moore contends that the trial court abused its discretion in ordering that he serve the entire suspended portion of his sentence. Indiana Code subsection 35-38-2-3(g) (2010) outlines a trial court's options following the finding of a probation violation as follows:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the 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 (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Subsection 35-38-2-3(g) permits judges to sentence offenders using any one of or any combination of the enumerated options. *Prewitt v. State*, 878 N.E.2d 184, 187 (Ind. 2007).

The Indiana Supreme Court has held that "a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard[.]" explaining that

Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.

Id. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* As long as the proper procedures have been followed in

conducting a probation revocation hearing, “the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). The “[c]onsideration and imposition of any alternatives to incarceration is a ‘matter of grace’ left to the discretion of the trial court.” *Monday v. State*, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996).

Although Moore argues that the trial court’s order is overly punitive and will do nothing to help him reintegrate into society, there is no indication, and Moore does not claim, that the trial court failed to follow the proper procedures. Moreover, as previously mentioned, Moore does not challenge many of the trial court’s findings that he violated the terms of his probation. Under the circumstances, and in light of the considerable leeway given the trial courts in probation matters, Moore has failed to establish that the trial court abused its discretion in ordering that he serve the balance of his sentence.

The judgment of the trial court is affirmed.

DARDEN, J., and BROWN, J., concur.