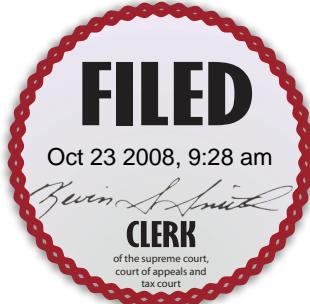


Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the
case.



ATTORNEY FOR APPELLANT:

TAFFANEE L. KEYS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

D'ANDRE GRIFFIN,)
)
Appellant-Defendant,)
)
)
vs.) No. 49A04-0801-CR-39
)
STATE OF INDIANA,)
)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0405-FC-080127
49G04-0707-FC-140577

October 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D'Andre Griffin appeals the revocation of his probation and the reinstatement of his previously suspended four-year sentence. We affirm.

Issues

Griffin raises multiple issues, which we restate as:

- I. whether the trial court properly revoked his probation; and
- II. whether the trial court acted within its discretion when it reinstated the remainder of his sentence.

Facts

On October 8, 2004, Griffin pled guilty to Class C felony auto theft, Class D felony auto theft, Class D felony resisting law enforcement, and Class A misdemeanor resisting law enforcement. He was sentenced to eight years to be served in community corrections, with four suspended. On May 18, 2005, Griffin admitted violating community corrections rules. The trial court ordered the remainder of his executed sentence to be served in the Department of Correction (“DOC”). On January 25, 2007, Griffin was released from the DOC and placed on probation.

On July 25, 2007, the probation department filed a notice of probation violation. Griffin had been arrested after being stopped while driving a stolen vehicle with a suspended license. The State charged Griffin with Class C felony auto theft, Class A misdemeanor driving while suspended, and Class B misdemeanor unauthorized entry into a motor vehicle. Griffin waived his right to a jury trial and his probation violation case was transferred to the same court overseeing the new charges.

The trial court held a bench trial on the new charges over two days on November 30, 2007, and December 20, 2007. The officer who pulled Griffin over testified that Griffin claimed at the scene that “his buddy Brett Misters or Masters” let him use the car. Tr. p. 55. The owner of the car, Brett Masters, testified that he did not know Griffin and did not lend him the car. Griffin admitted to driving the car on July 16, 2007, with a suspended license. He claimed a friend named Kim Quales let him borrow the car. The trial court was not convinced that the State met its burden to prove that Griffin stole the car and found him not guilty of auto theft and unauthorized entry into a vehicle. The trial court found him guilty of driving with a suspended license.

After announcing its findings, the trial court immediately addressed the alleged probation violations of failing to complete the “Thinking for a Change” program and failing to make payments on a court ordered financial obligation. The trial court asked Griffin’s attorney if Griffin admitted or denied the violations. Griffin explained that he had completed the program while incarcerated but only failed to provide his probation officer with the necessary paperwork. Griffin also claimed that his probation officer was working with him on a payment plan for the financial obligations that would take into account his child support expenses. Griffin claimed he was arrested before he could finalize the details and provide the necessary information and payments.

The trial court found that “the defendant was arrested as the first violation and that he has failed to attend Thinking for a Change and he’s failed to make payments towards his court ordered financial obligation.” Tr. pp. 114-15. The trial court ordered Griffin to

serve the four years that had been suspended and ordered him to serve one year consecutive to that for the driving while suspended conviction. This appeal followed.

Analysis

I. Probation Revocation

A defendant in a probation revocation proceeding is not entitled to the full due process rights that would be entitled to a defendant in a criminal proceeding. Terrell v. State, 886 N.E.2d 98, 100 (Ind. Ct. App. 2008) trans. denied. Probation revocation is a two-step process. First, the trial court must determine if a violation of a condition of probation occurred and if so, whether that violation warrants revocation. Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). The due process requirements for probation revocation hearings mandate that an evidentiary hearing be held and the defendant be provided counsel and an opportunity to confront and cross-examine witnesses. Id.; Ind. Code § 35-38-2-3(d) and (e).

When a probationer admits to a violation, however, the evidentiary hearing is unnecessary and the trial court can determine whether the violation warrants revocation. Woods, 892 N.E.2d at 640. But “even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation.” Id. Griffin was given exactly that opportunity. He explained to the court his reasons for failing to turn in the appropriate documentation for the “Thinking for a Change” program and his failure to pay the court fees. He did not offer any other reasons or justification for driving with a suspended license—a violation he admitted and a conviction that he received as a result of the trial.

Griffin argues that he was entitled to a separate probation revocation hearing, but this argument is unavailing because he admitted one of the alleged probation violations. This violation alone provided enough evidence for the trial court to revoke his probation. See Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000) (“Evidence of a single probation violation is sufficient to sustain the revocation of probation.”). Moreover, the trial court held a bench trial where Griffin testified, presented evidence, and was able to cross examine witnesses. He was given a full and fair opportunity to contest major probation violations alleged—his commission of new crimes. Griffin contends that a separate evidentiary hearing should have been held with a representative of the probation department present. The statutes do not contain such a requirement.

Even without the additional violations regarding the program and the court fees, Griffin violated his probation in serious manner by breaking the law and incurring a new conviction. The driving while suspended offense alone provided a sufficient basis for the trial court to revoke Griffin’s probation.

II. Sentence

We review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). Griffin contends that the trial court abused its discretion by not entering a detailed sentencing statement when it reinstated his sentence. This Anglemyer argument is inapplicable here as the four step process for reviewing sentences set out in Anglemyer deals with the initial imposition of sentence for a felony offense. Here, the trial court merely reinstated an already imposed sentence and Griffin cannot now challenge its

propriety. “A defendant may not collaterally attack a sentence on appeal from a probation revocation.” Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005).

Serving a sentence in a probation program is not a right, but rather a “matter of grace” and a “conditional liberty that is a favor.” Id. Specifically, Indiana Code Section 35-38-2-3(g) provides:

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.

Griffin admitted to driving with a suspended license, and he was arrested while driving a vehicle that had been reported stolen. The record reveals at least three probation violations for previous convictions and a dismissal from the community corrections program in the present case. The trial court ordered execution of all the remaining suspended time of the initial sentence, in line with Indiana Code Section 35-38-2-3(g)(3). This action was within the trial court’s discretion.

Conclusion

The trial court was not required to hold a separate probation revocation hearing following the bench trial. The trial court had sufficient evidence to conclude that Griffin

violated probation and did not abuse its discretion by revoking his probation and reinstating the remainder of his sentence. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.