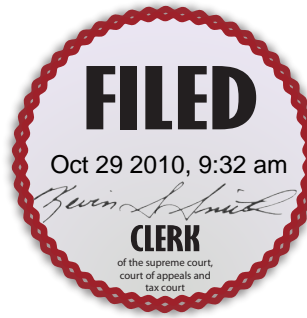


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TRACY D. PRICE, )

Appellant-Defendant, )

vs. )

No. 48A02-1004-CR-399

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable David Happe, Judge  
Cause No. 48E01-0702-FD-26

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**October 29, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Tracy D. Price appeals the trial court's decision to order the execution of his suspended sentence, arguing that it was error to require him to serve all five hundred and forty-five days after he violated the terms of his probation. Finding no abuse of discretion, we affirm.

## **Facts and Procedural History**

Price was charged with class D felony attempted theft on February 9, 2007. He pled guilty to this charge on July 17, 2007, and was sentenced to the Department of Correction for five hundred and forty-five days, all of which was suspended. On February 5, 2010, Price was arrested for resisting law enforcement after he fled from uniformed police officers and refused to stop when ordered to do so. The State filed an amended notice of violation of probation on February 11, 2010.

On March 15, 2010, the trial court held an evidentiary hearing and determined that Price had violated the terms of his probation by: (1) failing to report to the Probation Department for more than two years, (2) failing to inform the Probation Department of his current address, (3) failing to obtain his GED, and (4) committing a new criminal offense of resisting law enforcement. The court revoked Price's probation and ordered the execution of all five hundred and forty-five days of Price's suspended sentence.

## **Discussion and Decision**

Price now contends that the trial court erred when it ordered the execution of the entirety of his suspended sentence based on his probation violations. "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). Accordingly, “a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.* (citation omitted).<sup>1</sup>

If a trial court finds a probation violation, it may do one or more of the following:

- (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.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g).

In this instance, after finding that Price violated four conditions of his probation, the trial court chose to order execution of all of the suspended sentence. Under these circumstances, we find no abuse of discretion.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur

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<sup>1</sup> As an initial matter, Price attempts to invoke Indiana Appellate Rule 7(B) by arguing that the sentence imposed for his probation violation should be reviewed for appropriateness. Appellant’s Br. at 4. However, the Indiana Supreme Court has stated that Rule 7(B) review is not available in probation violation proceedings. *See Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008) (“[T]he appellate evaluation of whether a trial court’s sanctions are ‘inappropriate in light of the nature of the offense and the character of the offender’ is *not the correct standard to apply when reviewing a trial court’s actions in a post-sentence probation violation proceeding.*”) (emphasis added).