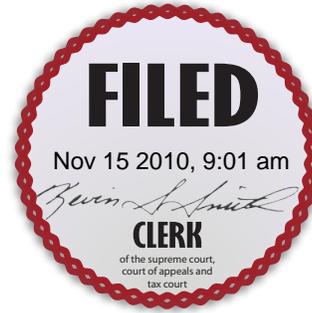


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GERARDO DELAO,)
)
Appellant/Defendant,)
)
vs.) No. 15A01-1004-CR-228
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0606-FB-24

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Gerardo Delao appeals the sentence imposed by the trial court following his admission to violating his probation. We affirm.

FACTS AND PROCEDURAL HISTORY

In September of 2007, Delao was convicted, pursuant to a plea agreement, of two counts of Class B felony child molesting, Class C felony child molesting, and Class D felony sexual battery. The trial court sentenced him to an aggregate term of twenty years, fifteen of which was suspended to probation. On October 22, 2009, Delao was released from the Department of Correction. On January 4, 2010, the State filed a notice of probation violation. Delao appeared before the trial court on March 15, 2010, and admitted to violating the terms of his probation. In finding Delao in violation of his probation, the trial court revoked Delao's probation and ordered him to serve six years of his previously-suspended fifteen-year sentence. Delao now appeals.

DISCUSSION AND DECISION

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. 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. 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.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) (quotations omitted).

Delao claims that the trial court abused its discretion in ordering that he serve six

years of his previously suspended sentence because he is a young man who had a difficult childhood and the cost of a six-year term of incarceration is substantial. Delao, however, does not point to any relevant authority in support of his claim. Indiana Code section 35-38-2-3(g) (2009) provides, in relevant part, that if the trial court finds that the person has violated a condition at any time before termination of the probationary period it may “order execution of all or part of the sentence that was suspended at the time of initial sentencing.” Here, Delao admitted that he violated the terms of his probation by consuming alcohol. Therefore, pursuant to Indiana Code section 35-38-2-3(g), it was within the discretion of the trial court to order execution of all or part of Delao’s suspended fifteen-year sentence. Accordingly, in light of Indiana Code section 35-38-2-3(g) coupled with the severity of Delao’s underlying convictions, we conclude that the trial court did not abuse its discretion in ordering that Delao serve six years of his previously suspended fifteen-year sentence.

The judgment of the trial court is affirmed.

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