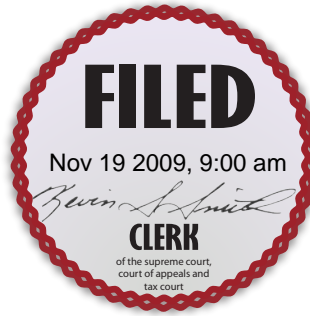


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM T. PADGETT, JR.,)

Appellant-Defendant,)

vs.)

No. 18A05-0905-CR-242

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Linda Ralu Wolf, Judge
Cause No. 18C03-0809-FD-125

November 19, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant William T. Padgett, Jr., appeals the trial court's order revoking his probation and directing that he serve the balance of his three-year sentence. Padgett argues that the trial court abused its discretion in ordering him to serve a three-year executed term. Finding no error, we affirm.

FACTS

On February 9, 2009, Padgett pleaded guilty to class A misdemeanor operating a vehicle while intoxicated, endangering a person. The trial court imposed a sentence of thirty-six months, with six months to be served as a direct commitment on house arrest and the balance to be suspended to supervised probation. As conditions of probation, Padgett was required, among other things, to abstain from alcohol and drug use and pay home detention fees.

On March 10, 2009, the State filed a petition to revoke Padgett's probation, alleging three violations of probation. Specifically, the petition alleged that on February 26, 2009—just seventeen days after Padgett was sentenced—Padgett had a blood alcohol content of .19, had committed a new offense of domestic battery, and had failed to pay \$140 in home detention fees. At the April 20, 2009, factfinding hearing, Padgett denied that he had committed a new offense but admitted that he had consumed six beers and had failed to pay home detention fees. Following the hearing, the trial court revoked Padgett's probation and ordered him to serve the balance of the originally-suspended three-year sentence. Padgett now appeals.

DISCUSSION AND DECISION

In considering Padgett's argument that the trial court should not have ordered him to serve the full balance of the previously-suspended three-year term, we note that probation is a matter of grace and a conditional liberty that is a favor, not a right. Noetrich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). We review a trial court's decision to revoke probation for an abuse of discretion, which occurs if the decision is against the logic and effect of the facts and circumstances before it. Marsh v. State, 818 N.E.2d 143, 144 (Ind. Ct. App. 2004). If the trial court finds that a probationer has violated a condition of probation, it may order execution of all or part of the sentence that was originally suspended. Ind. Code § 35-38-2-3(g)(3). A probation revocation hearing is in the nature of a civil proceeding; therefore, the alleged violation need be proved only by a preponderance of the evidence. Isaac v. State, 605 N.E.2d 144, 146 (Ind. 1992).

Here, Padgett admitted to violating two terms of his probation. Specifically, he admitted that he drank six beers seventeen days after sentencing and that he had failed to pay \$140 in home detention fees. Therefore, the trial court was entitled to order execution of all or part of his originally suspended three-year sentence. I.C. § 35-38-2-3(g)(3).

Padgett argues that the trial court abused its discretion in imposing the full three-year term. We cannot agree. Padgett's decision to consume six beers so soon after sentencing highlights his disregard for the court's authority and the privilege of probation. It also illustrates Padgett's substance abuse problem. In the words of the

prosecutor, Padgett has an “unbelievably severe alcohol issue.” Tr. p. 24. As of the date of the revocation hearing, Padgett had not yet completed the alcohol substance evaluation and treatment as required by the terms of his probation. Under these circumstances, we cannot conclude that the trial court abused its discretion in sentencing Padgett. Padgett’s arguments to the contrary amount to a request that we reweigh the evidence, which we may not do when considering the trial court’s decision to revoke a defendant’s probation.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.