

STATEMENT OF THE CASE

James M. Shell appeals from the trial court's revocation of his suspended sentences and order that he serve the remaining portion of those sentences in the Department of Correction ("DOC"). Shell raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve the remaining balance of his sentences in the DOC.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 19, 2007, Shell pleaded guilty to dealing in a controlled substance, as a Class B felony, in cause number 48C01-0609-FB-363 ("Cause 363"). Shell received a six-year sentence, all of which the court suspended to probation. Thereafter, on October 18, 2007, the State charged Shell with theft, as a Class D felony, and resisting law enforcement, as a Class A misdemeanor, in cause number 48C01-0710-FD-510 ("Cause 510"). As a result of those allegations, the State filed a petition to revoke Shell's probation in Cause 363.

In January of 2008, Shell entered into a plea agreement with the State wherein he pleaded guilty to the charge of theft in Cause 510 and admitted to having violated the terms of his probation in Cause 363. In exchange, the State agreed to have two years of Shell's suspended sentence in Cause 363 revoked and, instead, served through in-home detention. Shell also received a consecutive eighteen-month sentence for the theft charge, six months of which were suspended to in-home detention with the balance suspended to probation.

On March 17, 2008, the State filed a petition to terminate Shell's in-home detention in both causes because Shell had failed to pay necessary fees. Shell agreed to pay those arrearages and, on April 3, the State agreed to have Shell returned to in-home detention. Five days later, the State filed a second petition to terminate Shell's in-home detention. The second petition alleged that Shell had failed to maintain necessary contact with his supervisor and had again failed to pay his fees. The State issued a warrant for Shell's arrest on April 8, but it was another six weeks before he was arrested. The court held a fact-finding hearing on June 18. At that hearing, the State informed the court that the in-home detention program would no longer accept Shell as a participant. Shell asked the court for "one more chance." Transcript at 28. The court took the matter under advisement and scheduled a dispositional hearing for June 30.

On June 30, the court ordered Shell to participate in a work-release program. He was accepted into a program on July 1. Two days later, on July 3, Shell left the work-release facility for a job interview but did not return. The State filed a petition to revoke Shell's work-release placement on July 7 and issued a warrant for Shell's arrest. The State also filed a charge of escape, a Class D felony, against Shell.

Nine months later, on April 2, 2009, the State arrested Shell. At a hearing on April 27, Shell admitting to violating the terms of his probation in Cause 363 and Cause 510. Following Shell's admissions, the court stated, "I think the appropriate sanction is full revocation to the Department of Correction. . . . You screwed up work release. You screwed up in home. Where else . . . do I put you?" Id. at 42. This appeal ensued.

DISCUSSION AND DECISION

Shell challenges the trial court's revocation of his probation and order that he serve the remainder of his sentence in the DOC. We review a trial court's decision to revoke probation under an abuse of discretion standard. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied. A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Jones, 838 N.E.2d at 1148.

Here, Shell argues that the court abused its discretion when it fully revoked his probation. Specifically, Shell states that "[a] brief period of incarceration in the DOC followed by a return to community corrections could be the wake[-]up call the defendant needs." Appellant's Brief at 6. We cannot agree.

Shell has had numerous opportunities to reform his behavior, including two periods of in-home detention and a period of work release. Since he was originally placed on probation in Cause 363, Shell has committed felony theft, twice failed to pay

his in-home detention fees, failed to maintain proper contact with his in-home supervisor, avoided arrest for six months, and asked the court for “one more chance.” Transcript at 28. The trial court gave Shell that chance by permitting him to serve on work release, which Shell then promptly used to abscond from custody for the next nine months.¹ Thus, the trial court’s decision to fully revoke Shell’s probation and order that he serve the remainder of his sentence in the DOC was not an abuse of its discretion.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.

¹ Insofar as Shell argues on appeal that the trial court may not have been aware of non-incarceration options, that suggestion is defeated by the repeated non-incarceration options the trial court gave Shell.