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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES KIRK,)
)
 Appellant-Defendant,)
)
 vs.)
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

No. 71A03-0907-CR-309

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable R.W. Chamblee, Judge
Cause No. 71D08-0306-FA-43

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

James Kirk appeals the order on revocation of his probation that he serve the remaining thirty years of a previously suspended sentence. He requests we use our authority under Ind. Appellate Rule 7(B) to revise that order because it is inappropriate in light of his character and offense. Finding that review unavailable in this context, we affirm.

FACTS AND PROCEDURAL HISTORY

On July 1, 2004, the St. Joseph Superior Court accepted Kirk's plea of guilty to Class A felony dealing in methamphetamine in an amount over three grams and entered a judgment of conviction thereon. The court ordered a thirty-five year sentence, with thirty years suspended and five years of probation. One of the terms of probation was Kirk would "refrain from committing any criminal offenses, whether state or federal, felony or misdemeanor." (App. at 119.)

Kirk was arrested in Lake County on July 7, 2008 for felony possession of methamphetamine, then released on pretrial bond.

On September 16, 2008, the State filed a petition in St. Joseph Superior Court to revoke Kirk's probation because of the Lake County arrest. The St. Joseph Court ordered Kirk to appear for a probation revocation hearing on October 7, 2008.

On November 11, 2008, Mishawaka Police Officers were dispatched to investigate a possible methamphetamine lab. When they knocked on the garage door at the address, Kirk answered the door and refused to allow the officers to enter. The officers indicated they would be obtaining a search warrant, and Kirk then admitted he was cooking methamphetamine inside the garage. After obtaining the search warrant and gathering

evidence, the State charged Kirk with Class B felony dealing in methamphetamine and Class D felony possession of methamphetamine. On November 18, 2008, the State filed in the St. Joseph Court an amended petition to revoke Kirk's probation based on these two new methamphetamine charges.

Kirk and the St. Joseph County prosecutor negotiated an agreement to dispose of the petition to revoke Kirk's probation and the two charges stemming from the methamphetamine lab discovered on November 11, 2008. The agreement provided Kirk would plead guilty to Class D felony possession of methamphetamine, the State would dismiss the Class B felony charge, the sentence for the Class D felony conviction would be thirty months, Kirk would admit violating his probation, and the court would have discretion as to Kirk's punishment for the probation violation. The court ordered Kirk to serve all thirty of the years that had been suspended on his 2004 sentence for Class A felony dealing in methamphetamine.

DISCUSSION AND DECISION

“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). Trial courts determine the conditions of probation and may revoke probation if those conditions are violated. *Id.* Judges “have considerable leeway in deciding how to proceed” when revoking probation. *Id.*

Kirk requests we review his sentence under Ind. Appellate Rule 7(B), which allows us to “revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of

the offense and the character of the offender.” That Rule allows us to implement the “permissive jurisdiction granted in Article 7, Section 4 of the Indiana Constitution: ‘The Supreme Court shall have, in all appeals of criminal cases, the power . . . to review and revise the sentence imposed.’” *Jones v. State*, 885 N.E.2d 1286, 1289 (Ind. 2008). Because a “post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule,” Appellate Rule 7(B) review is not available for “a trial court’s actions in a post-sentence probation violation proceeding.” *Id.* (citing *Prewitt*, 878 N.E.2d at 188).

As Kirk has provided no argument the order was an abuse of discretion, he presents no cogent argument for our review. We affirm the order that Kirk serve all thirty of the years that previously had been suspended.

Affirmed.

CRONE, J., and BROWN, J., concur.