

Anthony Williams's ("Williams") probation was revoked by the Hamilton Superior Court, and Williams was ordered to serve the balance of his sentence in the Indiana Department of Correction. Williams appeals and raises two arguments:

- I. Whether the State presented sufficient evidence to establish that he violated the terms of his probation; and
- II. Whether the trial court abused its discretion when it ordered Williams to serve the 1510-day balance of his sentence in the Department of Correction.

We affirm.

Facts and Procedural History

On August 28, 2008, Williams pleaded guilty to Class C felony auto theft. Pursuant to the terms of the plea agreement, Williams was sentenced to eight years, with five years executed and three years suspended. Williams was ordered to serve two years of the executed sentence in the Department of Correction and three years on work release through Hamilton County Community Corrections ("HCCC"). He was also ordered to serve eighteen months on probation. The terms of his probation included the standard conditions as well as some special conditions requiring that Williams successfully complete the community corrections program, pay all fees and costs, complete a conversion workshop or equivalent program, and complete twenty hours of community service for each year of probation.

Williams completed his executed time in the Department of Correction, and thereafter, on February 15, 2010, he reported to HCCC, and signed a HCCC Residential Program Contract. On May 20, 2010, HCCC filed a notice of non-compliance of Williams's community corrections placement. The non-compliant acts included: not

calling in location changes as directed, being unemployed for more than thirty days, habitual conduct violations, failure to complete facility work hours as assigned, and removal from his general equivalency diploma (“GED”) classes. Thereafter, the Hamilton County Probation Department filed a notice of probation violation alleging that Williams violated his probation because he was required to successfully complete the community corrections placement as a term of his probation.

The probation revocation hearing commenced on February 3, 2011, and on February 8, 2011, the trial court found that Williams had violated the terms of his community corrections placement because he: 1) failed to report his change in location on five dates in May 2010, 2) failed to obtain employment, 3) failed to complete his required work hours, 4) committed several Level 4 offenses, and 5) failed to complete his GED classes. The trial court therefore concluded that Williams violated condition 15 of his probation because he violated the terms of his community corrections placement. The court ordered Williams to serve the remaining 1510 days of his sentence in the Department of Correction. Williams now appeals.

I. Sufficient Evidence to Revoke Williams’s Probation

Probation is a matter of grace and a conditional liberty that is a favor, not a right. Cooper v. State, 917 N.E.2d 667, 671 (Ind. 2009). The trial court determines the conditions of probation and may revoke upon determining that those conditions were violated. Id. The decision to revoke probation is committed to the trial court’s sound discretion. Id. We review its decision on appeal for abuse of that discretion. Id. When conducting our review, we consider only the evidence most favorable to the judgment

and do not reweigh the evidence or judge the credibility of the witnesses. Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008). If there is substantial evidence of probative value supporting the determination that a defendant has violated any terms of probation, we will affirm the decision to revoke. Id. at 640-41. The State must prove the alleged violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(e).

The State alleged that Williams violated condition number 15 of the terms of his probation, which provides: “You shall successfully complete any direct commitment through a community corrections program and serve the full term required.” Appellant’s App. p. 133. The State presented evidence that Williams committed several violations of the HCCC Residential Program Contract, which resulted in his termination from the program. The testimony of several HCCC employees and an instructor in charge of Williams’s GED classes established that Williams did not obtain employment, committed several Level 4 offenses,¹ did not complete his required work hours, was removed from his GED class because of his conduct toward the instructor, and failed to call in his change of location on several occasions from May 3-7, 2010.

The State presented one witness from the Hamilton County Probation Department. Probation Officer Joy Nun testified she did not personally supervise Williams, but that she was “in charge of keeping track of his file.” Tr. p. 133. She testified that Williams was on probation under cause number 29D01-0804-FC-25. She also stated that “the violation of probation is per Condition 15 which is a noncompliance filed by community corrections.” Tr. p. 134.

¹ These include going to unapproved locations and failure to listen to staff. Tr. pp. 107-09

Williams argues that this evidence is insufficient because Officer Nun did not personally supervise him, she could only identify him in court because the HCCC staff had done so, and the order of probation was not admitted at the revocation hearing. But Williams has not disputed his identity in that he is the same Anthony B. Williams who was convicted of Class C felony auto theft under cause number 29D01-0804-FC-25 and was placed in HCCC. Officer Nun was in charge of Williams's file under that cause number and was provided with HCCC's notices of Williams's non-compliance. Officer Nun required no other information to determine that Williams violated Condition 15 of his probation. Furthermore, although the order on probation was not admitted at the revocation hearing, Williams has never disputed his knowledge of Condition 15, and the order on probation signed by Williams was a part of the court's file. See Appellant's App. pp. 55-57.

For all of these reasons, we conclude that the State presented sufficient evidence to prove by a preponderance of the evidence that Williams violated Condition 15 of his probation.

II. Sentence

Upon the revocation of probation, a trial court may impose one or more of the following sanctions:

- (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).

“[A] trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id. Furthermore, “the judge should have considerable leeway in deciding how to proceed.” Id. Consequently, so long as proper procedures have been followed, the trial court may order execution of a suspended sentence after finding a violation by a preponderance of the evidence. Goonen v. State, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999); see also I.C. § 35-38-2-3(g). Finally, we observe that “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.’” Abernathy v. State, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006) (citations omitted).

Williams argues that the trial court abused its discretion when it imposed the balance of his previously suspended sentence because he committed only “administrative rule violations.” Williams’s attempt to minimize the severity of his conduct by categorizing his violations as “administrative” is disingenuous, at the very least. Williams committed several violations of his HCCC contract in just over three months, and his removal from his GED classes for inappropriate and threatening behavior toward the instructor and for being in unauthorized locations are serious violations. Williams has demonstrated disrespect for the authority of the HCCC staff and his inability to conform his behavior to the requirements of the community corrections program, his probation, and the law. For these reasons, we conclude that the trial court did not abuse its

discretion when it ordered Williams to serve the balance of his sentence in the Department of Correction.

Conclusion

The State proved by a preponderance of the evidence that Williams violated Condition 15 of his probation. Accordingly, we affirm the trial court's decision to revoke Williams's probation and to order him to serve the remaining 1510 days of his sentence in the Department of Correction.

Affirmed.

BAILEY, J., and CRONE, J., concur.