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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|-----------------------|
| TRAVIS N. DAVIS, |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 49A02-0602-CR-109 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy Broyles, Commissioner
Cause No. 49G05-0403-FB-52750

November 9, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Travis N. Davis appeals the revocation of his probation.

We affirm in part, reverse in part and remand.

ISSUES

1. Whether the evidence was sufficient to support the revocation of Davis' probation.
2. Whether the trial court erred in ordering Davis to serve the suspended sentence.
3. Whether the trial court properly calculated Davis' credit time.

FACTS

On March 26, 2004, the State charged Davis with aggravated battery, a class B felony. Following a bench trial, the trial court found Davis guilty of the lesser-included offense of class C felony battery. On August 9, 2005, the trial court sentenced Davis to a three-year suspended sentence and placed Davis on probation. As part of his probation, the trial court placed Davis on 180 days of home detention, to be monitored by Marion County Community Corrections ("MCCC"). The trial court also ordered Davis to pay restitution and assessed several fees against Davis.

On November 29, 2005, MCCC filed a notice of violation of community corrections rules. The notice alleged that from November 22, 2005 through November 28, 2005, Davis violated his home detention by having "numerous Bracelet Gones ranging from nine minutes to eighteen hours," meaning he was out of range from the box that monitored him with a global positioning system ("GPS"). (App. 41). The notice also alleged that Davis was "\$901.00 in arrears to MCCC." (App. 41).

On December 2, 2005, the State filed a notice of probation violation for failure to report for “intake processing.” (App. 43). On December 14, 2005, the State filed an amended notice of probation violation, alleging Davis failed to comply with the court-ordered community service and failed to pay court-ordered fees and restitution.

Following a hearing on January 11, 2006, the trial court found that Davis had violated his probation by “fail[ing] to report to probation for intake,” and “fail[ing] to comply with that condition of 180 days of home detention or GPS” (Tr. 53, 54). The trial court ordered Davis to serve his suspended sentence of three years in the Department of Correction (“DOC”). The trial court then determined Davis had “credit for 111 days” (Tr. 55). The trial court calculated Davis' credit as follows:

THE COURT: [W]hat do you show as his credit as the time he served?

MR. STEINBACH: I’m showing his time served . . . with Community Corrections currently

THE COURT: He says 112 days.

* * * * *

MR. LACY: I think you can also count the 44 days he’s been in custody.

THE COURT: No, I just want to know what he did on Community Corrections.

MR. STEINBACH: It’s 112 days

THE COURT: He has credit for 111 days, and let me tell you how I did that. He had 54 days in the Marion County Jail[.]

* * * * *

THE COURT: [F]ifty-four days. He cannot get 2 days credit for 1 day credit on home detention, so I divided the 112 days and that gave him 56, which when he gets to DOC he will get his double credit.

* * * * *

THE COURT: If I send it to DOC as 112 . . . they'll double it, and that is not correct.

MR. BORLAND: But he should get the good time credit for the 54 days that he did serve?

THE COURT: That's included—he's getting 54 there.

* * * * *

THE COURT: And the 112, he's getting half of that, which will eventually be doubled.

(Tr. 55-57).

The case chronology contains the following notation: "Defendant ordered committed to Department of Correction and given 110 days credit time." (App. 28). The abstract of judgment lists "110" as the number of days Davis was confined prior to sentencing. (App. 31).

Additional facts will be provided as necessary.

DECISION

1. Sufficiency of the Evidence

Davis asserts that the evidence was insufficient to support the trial court's revocation of his probation. Specifically, Davis contends that there was no indication that he was violating his home detention, and that he was never apprised that "he also

needed to do more with the probation department itself” other than report to MCCC for home detention. Davis' Br. 5.

Whether to revoke probation is within the trial court’s discretion. *Hubbard v. State*, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997). When reviewing a revocation, we will neither weigh the evidence nor assess witness credibility. *Id.* We will affirm revocation if, considering only the probative evidence and reasonable inferences therefrom, there is sufficient evidence supporting the conclusion that the probationer is guilty of violating any condition of his probation. Ind. Code § 35-38-2-3; *Hubbard*, 683 N.E.2d at 620.

In this case, Jon Steinbach, a GPS officer with MCCC, testified that he was responsible for monitoring Davis’ home detention, and that Davis had “numerous Bracelet Gones ranging from 9 minutes to 18 hours,” which was a violation of Davis’ home detention. (Tr. 4). Steinbach further testified that he “made several attempts to contact [Davis] by sending messages to his PTD, which is the box that” Davis was supposed to carry with him. (Tr. 4). Steinbach testified that “on at least three occasions over a period of about two and a half months,” he spoke with Davis, who had stated “that he was not carrying the box with him because he thought it was . . . ugly or it was embarrassing” (Tr. 11, 4). Steinbach also testified that he had checked on the equipment assigned to Davis and that it was operating correctly.

Also during the hearing, the State admitted into evidence the order of probation, which Davis signed. The order of probation provided that Davis must report as directed to the probation department. William Lacy testified that Davis “has never reported to complete the intake process and start reporting to probation.” (Tr. 13).

There was sufficient evidence that Davis violated the terms of his probation. Accordingly, we find the trial court acted within its discretion when it revoked Davis' probation.

2. Sentence

Davis asserts that the trial court abused its discretion when it ordered him to serve the originally suspended three-year sentence. Davis also asserts that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

Indiana Code section 35-38-2-3(g) provides as follows:

If the court finds that the person has violated a condition [of probation] at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (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; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Podlusky v. State*, 839 N.E.2d 198, 200 (Ind. Ct. App. 2005). Furthermore, "the standard of review used when reviewing whether a defendant's probation revocation sentence is *unreasonable* is an abuse of discretion." *Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005) (emphasis added), *trans. denied*.

In this case, the evidence shows that Davis violated his probation numerous times. Thus, we find no abuse of discretion in ordering Davis to serve his suspended sentence.

3. Credit Time

Davis asserts the trial court improperly calculated his credit time. Davis argues he is entitled to 204 days of credit time, which includes: (1) 48 days he spent in jail on the original battery charge, (2) 112 days spent on home detention, and (3) 44 days he was incarcerated on the probation violation.¹

Pursuant to Indiana Code section 35-50-6-4(a), “[a] person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I,” and pursuant to Indiana Code section 35-50-6-3(a), “[a] person assigned to Class I earns one (1) day of *credit time* for each day he is imprisoned for a crime or confined awaiting trial or sentencing.” (Emphasis added). “[P]re-sentence jail time credit is a matter of statutory right and not a matter of judicial discretion.” *Reed v. State*, 844 N.E.2d 223, 225 (Ind. Ct. App. 2006). Upon sentencing, the trial court “shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.” Ind. Code § 35-38-3-2(a). The certification of judgment must include “the amount of credit, including credit time earned, for time spent in confinement before sentencing[.]” I.C. § 35-38-3-2(b)(4).

Furthermore, “[a] person confined on home detention as a condition of probation earns *credit for time served*.” I.C. § 35-38-2.5-5 (emphasis added);² *Senn v. State*, 766 N.E.2d 1190, 1199 (Ind. Ct. App. 2002) (finding that “a defendant who has served time

¹ The trial court actually credited Davis with 54 days incarceration following his probation violation.

² In *Purcell v. State*, 721 N.E.2d 220, 222-23 (Ind. 1999), *reh’g denied*, our Supreme Court distinguished “credit for time served” from “credit time,” which means “good time credit” or “the additional credit a prisoner receives for good behavior”

on home detention as a condition of probation is owed credit for time served”), *reh’g denied*. Additionally, Indiana Code section 35-38-2-3(h) provides as follows:

If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

- (1) order a sanction as set forth in subsection (g); and
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.

A person, however, “does not earn *credit time* while on parole or probation.” I.C. § 35-50-6-6(a) (emphasis added).³

It does not appear that the trial court properly credited Davis’ sentence with credit time and time served. We therefore remand this cause to the trial court for a hearing to establish (1) the total amount of time Davis actually served in jail (after both his original offense and his probation violation); (2) Davis’ credit time earned from his incarceration;⁴ and (3) Davis’ credit for time served while on home detention.

Affirmed in part, reversed in part and remanded.

BAKER, J., and NAJAM. J., concur.

³ Thus, contrary to Davis’ assertion, he is not entitled to a total of 204 days of credit time as a defendant may not earn credit time for time spent on home detention.

⁴ Davis’ credit time is based on his good behavior during incarceration. *See Senn*, 766 N.E.2d at 1195 n.3.