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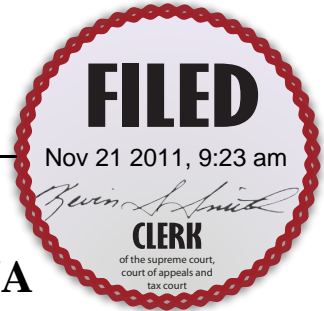
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**IN THE
COURT OF APPEALS OF INDIANA**

BRUCE KING,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-1105-CR-214

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0608-FA-143346

November 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Bruce King appeals the trial court's revocation of his probation. King presents two issues for our review, which we restate as: (1) whether there was sufficient evidence to support the revocation of his probation, and (2) whether the trial court abused its discretion when it ordered him to serve his previously suspended four-year sentence. Finding the evidence sufficient and finding no abuse of discretion, we affirm.

Facts and Procedural History

On August 2, 2006, King became angry with his live-in girlfriend, D.P., because he believed she had been unfaithful to him. While armed with a shotgun, King ordered D.P. to remove her pants and inserted a squash vegetable into her vagina, causing severe pain, bleeding, and tearing. King then had sexual intercourse with D.P. On August 4, 2006, the State charged King with two counts of class A felony criminal deviate conduct, one count of class A felony rape, one count of class B felony criminal confinement, and one count of class D felony intimidation. The State later amended the information to also include one count of class C felony aggravated battery. On August 15, 2007, King entered into a written plea agreement with the State, pursuant to which he pled guilty to one count of class B felony aggravated battery and the State dismissed all other charges. The plea agreement also provided that the executed portion of King's sentence would be capped at eight years and his total sentence would be capped at fifteen years. The trial court accepted King's guilty plea and sentenced King to a ten-year sentence, with six years executed and four years suspended, with a probationary period of two years.

King began serving probation on February 2, 2009. One of the conditions of his probation was that he not commit a criminal offense. Appellant's App. at 71. On January 8, 2011, King, who had since married, became angry with his wife S.K. He grabbed her, hit her in the back, and pushed her, causing her to fall. S.K. suffered a bruise as a result. S.K. reported the alleged battery to the Madison County Sheriff's Department.¹ Consequently, a warrant was issued for King's arrest.

Thereafter, on February 1, 2011, the State filed its notice of probation violation. Following a hearing on April 6, 2011, the trial court found that King had violated his probation and ordered him to serve his four-year suspended sentence. This appeal ensued.

Discussion and Decision

I. Sufficiency of the Evidence

King appeals the trial court's revocation of his probation. As an initial matter, we note that probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Id.* Because a probation revocation hearing is civil in nature, an alleged violation need only be proven by a preponderance of the evidence. *Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006).

On appeal, we do not reweigh the evidence or judge the credibility of witnesses, and we look only to the evidence that supports the judgment and any reasonable inferences

¹ S.K. is deaf and reported the incident in person through written communication.

flowing therefrom. *Baxter v. State*, 774 N.E.2d 1037, 1044 (Ind. Ct. App. 2002), *trans. denied*. We review a trial court's decision in a probation revocation proceeding for an abuse of discretion. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court. *Prewitt*, 878 N.E.2d at 188. If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation of a condition of probation, revocation is appropriate. *Richardson v. State*, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008).

Here, one condition of King's probation was that he not commit a criminal offense while on probation. During the revocation hearing, S.K. testified that she was afraid of King at times and that he often pulled her hair when he was angry. S.K. stated that she went to police after an incident that occurred on January 8, 2011, when King grabbed her, hit her in the back, and pushed her, causing her to fall. S.K. stated that she suffered bruising on that date. This testimony is sufficient to establish by a preponderance of the evidence that King committed battery, a class B misdemeanor.² King's sole argument regarding sufficiency of the evidence is that S.K., who is deaf and testified through an interpreter, was confused and did not understand the questioning during the probation revocation hearing. Although S.K. did state that she did not intend for King to have his probation revoked due to the incident, her recollection of the events that amounted to the battery was clear. King merely invites us to reweigh the evidence, a task not within our prerogative on appeal. The evidence is

² Ind. Code § 35-42-2-1(a).

sufficient to sustain the trial court's conclusion that King violated a condition of his probation.

II. Sentencing

King next challenges the trial court's decision to order him to serve the entirety of his four-year suspended sentence. We review a trial court's sentencing decisions for probation violations under the abuse of discretion standard. *Prewitt*, 878 N.E.2d at 187. We remind King that a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" that is a favor, not a right. *Id.* at 188. Indeed, if the trial court finds that a defendant has violated a condition of probation at any time before the termination of the probationary period, it is within the trial court's discretion to order execution of all or part of the sentence that was suspended at the time of initial sentencing. *See* Ind. Code § 35-38-2-3(g).

Here, the trial court found by a preponderance of the evidence that King committed battery against his wife. This is the same type of domestic violence for which King was originally convicted and for which the trial court granted him the favor of probation. Clearly, King has shown that his propensity for violence against the women in his life continues despite the court's attempt to give him the liberty that probation allows. Although King argues that the trial court should have considered that he had been a "good probationer" prior to the January 2011 incident, the trial court specifically disagreed and noted that S.K.'s testimony indicated an ongoing pattern of domestic abuse in King's household. Appellant's

Br. at 5; Tr. at 27-28. Under the circumstances, we cannot say that the trial court abused its discretion when it ordered King to serve his previously suspended four-year sentence.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.