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**IN THE  
COURT OF APPEALS OF INDIANA**

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RODNEY M. LOPEZ,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 57A04-0604-CR-198

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APPEAL FROM THE NOBLE CIRCUIT COURT  
The Honorable G. David Laur, Judge  
Cause No. 57C01-9910-CF-95

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**November 9, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Rodney M. Lopez appeals the revocation of his probation and presents the following restated issues:

1. Was there sufficient evidence to establish Lopez violated his probation?
2. Did the trial court abuse its discretion by revoking his entire suspended sentence?

We affirm.

The facts favorable to the judgment are that in October 1999, the State charged Lopez with dealing in a schedule I controlled substance (count I) and dealing in marijuana (count II). In March 2000, Lopez entered into a plea agreement with the State pursuant to which Lopez pleaded guilty to count I as a class B felony and the State dismissed count II. Upon the conviction of count I, a trial court sentenced Lopez to eight years of imprisonment, five years of which were suspended. On January 12, 2004, Lopez's probation officer filed a probation violation report that alleged Lopez violated the terms of his probation by consuming alcohol and operating a vehicle while intoxicated. On March 4, 2004, a trial court revoked Lopez's probation and ordered him to serve sixty days in jail and perform one-hundred hours of community service.

On November 26, 2005, Officer Michael Reneau of the City of Garrett Police Department received a call that two men intruded into James Morris's home. When Officer Reneau arrived at Morris's home, he found Lopez, Lopez's wife, April Lopez, and Benji VanAllen standing outside of the home. April informed Officer Reneau that Lopez beat Morris "to which [] Lopez responded that he [] found [April and Morris] in bed naked together and . . . that's what caused the fight." *Transcript* at 68. April further

stated that Lopez entered Morris's home while she and Morris were sleeping, and that Lopez proceeded to beat Morris as he lay in bed. "Lopez told [April] . . . he wasn't going to stop beating [] Morris until she left the room . . . ." *Id.* at 70. VanAllen also informed Officer Reneau that Lopez beat Morris. According to Officer Reneau, Morris's "face was extremely swollen and appeared to be disfigured. He had blood about his face. [] [H]e complained of pain . . . below his . . . ribcage . . . . [H]e was disoriented and didn't appear to be completely with [it]." *Id.* at 69. As a result of being battered, Morris was too incoherent to identify his assailant and had to be taken to the hospital.

Several days later, the State filed a second probation violation report after Lopez was arrested for battery as a class C felony. Approximately one week after the incident, Lopez informed his probation officer, Kristen Fee, that he beat Morris. "[Lopez] told [Fee] that he went to [] Morris'[s] house and found [Morris] and April in bed together and lost it and started to beat [Morris] up. [Lopez] advised [Fee] that he hurt [Morris] badly and was so sorry and he could not stop himself." *Id.* at 91.

On February 16, 2006, a fact-finding hearing was held to determine whether Lopez violated the terms of his probation. April and Lopez were still married at the time of the hearing. At the hearing, April contradicted her previous statements to Officer Reneau. She testified the second intruder, whom she could not identify at the hearing, beat Morris and that Lopez did not beat Morris, but merely told her to put her clothes on and leave. April acknowledged she told Officer Reneau that Lopez beat Morris, but stated she lied to Officer Reneau because "[Lopez and the second intruder] just told [her that] if [she] said . . . that the [other] guy did it, then the same thing was going to happen

to me [that happened to Morris].” *Id.* at 80. Lopez also testified that he did not beat Morris and claimed he could not remember the identity of the second intruder, whether he threatened April, or whether he admitted to beating Morris. Lopez could only testify that he “may have told all [his] friends or something that [he] did it.” *Id.* at 87.

“Standard Condition: Term 2” of Lopez’s probation agreement states “You must not commit another criminal offense. If you do commit another criminal offense, your probation may be revoked. You shall advise your Probation Officer immediately if you are arrested or detained for questioning by a law enforcement officer.” *Appellant’s Appendix* at 95. Based upon term two of Lopez’s probation agreement and the testimony at the hearing, the trial court determined that Lopez violated the terms of his probation and ordered Lopez to serve the remainder of the five-year suspended term of imprisonment with credit for time served. Lopez now appeals.

1.

Lopez contends there was insufficient evidence to support the trial court’s judgment. Probation is a favor granted by the State rather than a right to which a criminal defendant is entitled. *Podlusk v. State*, 839 N.E.2d 198 (Ind. Ct. App. 2005). A probation revocation hearing is civil in nature, and the State need only prove an alleged violation by a preponderance of the evidence. *Id.* We review a trial court’s decision to revoke probation for an abuse of discretion. *Id.* Upon appeal, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the witnesses’ credibility. *Id.*

As a condition of his probation, Lopez was to refrain from “commit[ing] another criminal offense.” *Appellant’s Appendix* at 95. Officer Reneau’s testimony regarding Lopez’s, April’s, and VanAllen’s statements that Lopez beat Morris, April’s acknowledgement that she told Officer Reneau that Lopez beat Morris, Fee’s testimony that Lopez admitted beating Morris, and Lopez’s admission that he may have told his friends he beat Morris, were sufficient to prove by a preponderance of the evidence that Lopez beat Morris, and thus violated a term of his probation. There was, therefore, sufficient evidence to support the trial court’s judgment.

2.

Lopez contends the trial court abused its discretion by revoking his probation.<sup>1</sup> We review a trial court’s decision to revoke probation and its sentencing decision in a probation revocation proceeding for an abuse of discretion. *Abernathy v. State*, 852 N.E.2d 1016. An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Id.* When reviewing a trial

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<sup>1</sup> Lopez also contends the trial court’s decision to impose the entire five-year suspended portion of his sentence was inappropriate under the Ind. Appellate Rule 7(B) standard, but states “[i]t is not clear which standard of review[, *i.e.*, abuse of discretion or appropriateness,] is applicable to review a sentencing decision after probation has been revoked.” *Appellant’s Brief* at 4. In support of his contention, Lopez asserts *Stephens v. State*, 818 N.E.2d 936 (Ind. 2004) stands for the proposition that a defendant may challenge the revocation of his probation under App. R. 7(B). Contrary to Lopez’s assertion, however, our Supreme Court made no mention of App. R. 7(B) in *Stephens*. See *Stephens v. State*, 818 N.E.2d 936. Further, in the wake of *Stephens*, we have consistently held a trial court’s decision to revoke a criminal defendant’s probation is reviewed for an abuse of discretion. See, *e.g.*, *Podlusk v. State*, 839 N.E.2d at 200 (“[w]e review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion”); *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005) (“[w]e review a trial court’s decision to revoke probation and a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion”); *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005) (“we review a trial court’s decision to revoke probation and a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion”), *trans. denied*. It is worth emphasizing that our Supreme Court denied transfer in *Sanders v. State*, 825 N.E.2d 952. We will, therefore, review Lopez’s claim under the abuse of discretion standard. See *Abernathy v. State*, 852 N.E.2d 1016 (Ind. Ct. App. 2006).

court's decision to order a defendant's previously suspended sentence to be executed after revoking probation, we do not review the propriety of the defendant's original sentence. *Id.* Probation is a criminal sanction whereby a defendant specifically agrees to accept restrictions upon his behavior in lieu of imprisonment. *Id.* These restrictions are designed to ensure that probation serves as a period of genuine rehabilitation and the public is not harmed by a probationer living within the community. *Id.*

Generally, as long as the trial court follows the procedures outlined in Ind. Code Ann. § 35-38-2-3 (West, PREMISE through 2006 2<sup>nd</sup> Regular Sess.), it may properly order execution of a suspended sentence. *Abernathy v. State*, 852 N.E.2d 1016. I.C. § 35-38-2-3(g) provides:

If the [trial] court finds that the person has violated a condition 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.

Lopez violated a term of his probation by entering Morris's home and beating him so severely while he slept that he was incoherent and had to go to the emergency room. "[U]ltimately it is the trial court's discretion as to what sanction to impose under [I.C. § 35-38-2-3(g),]" and the trial court was statutorily authorized to order the execution of all of Lopez's suspended sentence. *Abernathy v. State*, 852 N.E.2d at 1022. Further, Lopez

previously violated the terms of his probation and was shown leniency by the trial court, yet this did not reform his behavior. The facts, as set forth above, demonstrate the trial court had ample basis for its decision to order Lopez to serve the remainder of his suspended sentence. The trial court, therefore, did not abuse its discretion by ordering Lopez to serve his suspended sentence.

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.