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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY IRONS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A04-0709-CR-508
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D03-9904-CF-242, 71D03-0302-FC-39, and 71D01-0603-FD-371

December 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Anthony Irons appeals the sentence imposed following his conviction of possession of cocaine, a class D felony. Irons presents the following restated issues for review:[1]

1. Did the trial court abuse its discretion in sentencing Irons following the revocation of his probation?

2. Was the sentence imposed erroneous?

We affirm.

The facts underlying this appeal are largely procedural in nature and primarily involve four separate convictions. For the sake of clarity, we will refer to those cases as the robbery case, the sexual misconduct case, the handgun case, and the cocaine case. Chronologically speaking, the robbery conviction came first and resulted from Irons's plea of guilty on September 1, 1999, to robbery as a class C felony. He received a four-year sentence, which was suspended to probation. In December 2000, Irons was charged with sexual misconduct with a minor as a class C felony (the sexual misconduct case). In March 2001, the State petitioned to revoke probation in the robbery case, alleging Irons had been terminated from the community service program to which had been assigned. The State withdrew the petition to revoke as part of a plea agreement, whereby Irons

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[1] We note also the following statement in the "Summary of the Argument" section of Irons's appellate brief: "Furthermore, the trial court should have allowed the withdrawal of Defendant's guilty plea." *Appellant's Brief* at 8. Irons does not mention this issue in the "argument" section of his brief. For failing to provide supporting argument accompanied by citation to authority, the argument is waived. *See Absher v. State*, 866 N.E.2d 350 (Ind. Ct. App. 2007); *see also* Ind. Appellate Rule 46(A)(8)(a) & (b) (providing that appellant's contentions regarding the issues presented on appeal must be supported by cogent reasoning and citations to authorities and statutes).

agreed to plead guilty to a class D felony in the sexual misconduct case. Irons received a two-and-one-half-year sentence for that conviction. Also, it was agreed that probation in the robbery case would be tolled while he was serving the sexual-misconduct sentence. On November 25, 2002, the State filed another petition to revoke in the robbery case, this one alleging Irons had failed to report to probation upon his release from the sexual-misconduct sentence. This petition was later withdrawn.

On February 11, 2003, the handgun case commenced with the filing of charges ultimately resulting in Irons pleading guilty to carrying a handgun without a license as a class C felony. Irons also admitted he violated his probation in the robbery case. The trial court sentenced Irons to eight years in the handgun case, with four years executed and four years suspended to probation. The court also determined that Irons would serve two more years of probation in the robbery case, commencing after he finished serving the sentence in the handgun case.

On March 1, 2006, the State charged Irons with possession of cocaine as a class D felony (the cocaine case). Based upon that charge, the State filed a petition to revoke Irons's probation in the handgun case. On August 14, 2006, Irons pleaded guilty in the cocaine case and admitted violating his probation in both the handgun and robbery cases. A sentencing hearing was held on November 28, 2006 concerning the cocaine, handgun, and robbery cases, the latter two involving the status of his probation. Irons failed to appear at that hearing. At a subsequent January 19, 2007 hearing, the trial court sentenced Irons to the maximum three years in the cocaine case, and ordered him to serve

the previously suspended four-year sentences for both the robbery and handgun convictions. The court further ordered the three sentences to be served consecutively, for an aggregate sentence of eleven years. Irons appeals that sentence.

1.

Irons's first claim of error centers upon the execution of the previously suspended four-year sentence in the robbery case. Irons contends that decision was erroneous for the following reasons: (1) The trial court had previously reduced the suspended sentence in the robbery case from four to two years and (2) Irons had not yet begun to serve that probationary period.

We review a trial court's sentencing decisions in a probation revocation proceeding for an abuse of discretion. *Podlusky v. State*, 839 N.E.2d 198 (Ind. Ct. App. 2005). In so doing, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of the witnesses. *Id*.

Irons's first challenge to this aspect of the sentencing order is premised upon the claim that the trial court at some point reduced the four-year probationary period for the robbery conviction to two years. The record does not support that claim. In the sentencing order for the handgun conviction, the trial court addressed the robbery sentence as follows:

> In [the robbery case], Court finds violation and continues the Defendant on probation for a two year period to begin on completion of probation period ordered herein on [the handgun case]. Court requests Probation Department to calculate pre-sentence jail credit on [the handgun conviction] and requests Probation to calculate period that was tolled in [the robbery

> conviction] as well as whether the Defendant has any remaining jail credit toward suspended four years in [the robbery case].

Appellant's Appendix at 37. Irons interprets the foregoing order as a reduction of the term of probation for the robbery conviction. To the contrary, the court did not formally reduce the period of probation, but merely decided to impose only two of the four years. That aspect of the order is best understood in conjunction with another part of the same sentencing order in which the court determined that the sentence for the handgun conviction would be eight years, with four years executed, four years suspended, and two years on probation. Read together, the court imposed a total of four years of probation following completion of the four-year executed portion of sentence for the handgun conviction, with two years of the four-year probationary period attributable to the robbery sentence. In any event, the trial court's comments do not support Irons's claim that the trial court formally reduced the probationary period for the robbery conviction. Therefore, the court in the instant case was free to execute the entire four-year portion of that sentence originally suspended to probation.

Irons next contends the trial court erred in revoking probation for the robbery conviction because he had not yet begun to serve that sentence. This court rejected a similar claim in *Kopkey v. State*, 743 N.E.2d 331 (Ind. Ct. App. 2001), *trans. denied*. In *Kopkey*, the defendant was sentenced to probation, which was to commence following a period of incarceration and then in-home detention. After finding that the defendant violated the terms of his in-home detention, the trial court revoked the defendant's

probation. The defendant argued that the trial court erred in revoking his probation for acts that occurred before his probation period actually commenced. We rejected that argument, citing the following excerpt from *Gardner v. State*, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997):

> When a trial court grants a defendant probation in lieu of an executed sentence, the trial court is taking many aspects of the defendant's character into account. When the defendant commits a crime or violates a term of the probation, the trial court should be able to weigh that violation in its reevaluation of whether the defendant should be or should have been granted probation.... Once a defendant has been sentenced, the court may revoke or modify probation, upon a proper showing of a violation, *at any time before the completion of the probationary period*.

(Emphasis supplied.) We determined that a probationary period begins immediately after sentencing, even if the defendant actually begins to serve probation at a later date. Thus, we held that the *Kopkey* defendant was in his probationary period while serving in-home detention. Because probation is a conditional liberty and a favor, not a right, *see Cox v. State*, 850 N.E.2d 485 (Ind. Ct. App. 2006), we concluded that the trial court acted legitimately in reevaluating his character and suitability for probation in light of the violation of the in-home detention, notwithstanding that he had not yet actually begun serving the probation component of his sentence.

Kopkey controls here. The probationary period of Irons's robbery sentence began immediately after he was sentenced in that case. Thus, the trial court acted legitimately in reevaluating his character and suitability for probation and determining he was not an

acceptable candidate for probation in light of the offenses he committed after sentencing but before he actually began serving the probation component of his robbery sentence.

2.

Irons contends the eleven-year sentence imposed by the trial court is erroneous. He does not challenge as inappropriate any particular component of the sentence, but instead the aggregate eleven-year term of imprisonment. Irons's argument in this respect is framed entirely in terms of the appropriateness of an eleven-year sentence for a person in his circumstances, i.e.,

> Mr. Irons was 26 years of age at the time of sentencing. He also has children which are impacted by his absence. The aggregate sentences comprise a large percentage of Mr. Irons' life and place him in an environment that may greatly diminish his ability to reform his life. More appropriate sentences would provide Mr. Irons with the ability to rehabilitate himself in addition to punishment. The trial court was not required to impose the full suspended portion of the previous sentence and, based on Mr. Irons' youth, could have accomplished the goals of rehabilitating him with a lesser sentence which, arguably, should have originally been for a shorter duration.

Appellant's Brief at 12.

This court has consistently reviewed sentencing decisions for violations of probation utilizing an abuse of discretion standard. *See, e.g.*, *Jones v. State*, 838 N.E.2d 1146 (Ind. Ct. App. 2005). We acknowledge, however, that our Supreme Court has reviewed the length of a previously suspended sentence imposed for a probation violation using language that might be interpreted as employing an inappropriateness standard under App. R. 7(B). *See Stephens v. State,* 818 N.E.2d 936, 943 (Ind. 2004) ("Defendant

claimed that the additional three-year sentence for his probation violations was 'unreasonable given the nature of the violations and the character of the offender'…[w]e have reviewed the facts of the case and find the trial court's reasoning for the sentence imposed to be persuasive") (internal citation omitted). We have considered the question in other cases and determined that *Stephens* does not establish an inappropriateness standard of review in such circumstances. *See Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005) ("[a]lthough some of the language used suggests that [the Supreme Court in *Stephens*] may have used Ind. Appellate Rule 7(B), we believe … that the standard of review used when reviewing whether a defendant's probation revocation sentence is unreasonable is an abuse of discretion"), *trans. denied*. We continue to adhere to the view expressed in *Sanders* that the sentencing decision here should be reviewed under the abuse-of-discretion standard. Even were we to employ an inappropriateness analysis, however, the aggregate, eleven-year sentence is affirmable.

Irons was convicted in the robbery case and began serving probation in September 1999. From that time until the present, multiple petitions to revoke probation have been filed, alleging violations of probation including failure to participate in a required community service program and failure to report. Although most of those petitions were withdrawn, at least one was dismissed as part of a plea agreement. In any event, an April 4, 2006 probation violation report by the St. Joseph County Probation Department reflects that Irons at that time had violated probation four times. We note also that Irons was convicted of three separate felony offenses after he pleaded guilty in the robbery

case, and at least two of those offenses were committed after the robbery conviction was entered.[2] Since he was convicted of robbery in 1999 and began serving probation, Irons has demonstrated that he is either unwilling or unable to abide by the terms of probation or indeed even to conform his behavior to the laws of society. The trial court accurately identified the aggravating and mitigating circumstances, including most notably the aforementioned criminal history and the hardship on his family. The court summarized its central conclusion about an appropriate sentence for Irons as follows:

> And until you get straight, no matter how good a dad you want to be, you will never be the dad that you can be. But at this point, all I can do is keep you in the Department of Corrections [sic] and have you serve your sentences. You've got a lot of breaks already, and you blew each one of them. And, at this point, there's no reason to believe that you would do anything but blow another[.]

Transcript at 11-12. As the Supreme Court did in *Stephens* in the face of a similar claim of inappropriateness, "[w]e have reviewed the facts of the case and find the trial court's reasoning for the sentence imposed to be persuasive." *Stephens v.* State, 818 N.E.2d at 943. Whether reviewed under an abuse of discretion standard or for appropriateness under App. R. 7(B), the trial court did not err in sentencing Irons as it did.

Judgment affirmed.

MATHIAS, J., and ROBB, J., concur.

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[2] Although Irons was charged in the sexual misconduct case in December 2000, i.e., more than one year after the robbery conviction was entered, we can find no indication in the appellate materials of when that offense was committed.