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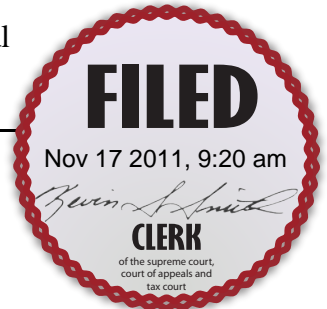
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**IN THE
COURT OF APPEALS OF INDIANA**

CORDELL M. WELLS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 84A04-1101-CR-32

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause Nos. 84D03-0809-FD-3024, 84D03-0811-FD-3644 & 84D03-0901-FD-152

November 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Cordell M. Wells appeals the revocation of his probation and the trial court's order that he serve two years of his previously-suspended sentence in the Indiana Department of Correction. He contends that the trial court abused its discretion by imposing the two-year sentence and failing to consider his drug addiction, the treatment and effects of his addiction, and his mental state in its decision. Because we determine that the trial court did not abuse its discretion in revoking Wells' probation and imposing two years of his previously-suspended two and one-half year sentence, we affirm.

Facts and Procedural History

On September 18, 2008, Wells was charged with Class D felony fraud ("Charge 1") and Class D felony theft ("Charge 2") in Cause No. 84D03-0809-FD-3024. On November 19, 2008, he was also charged with Class D felony receiving stolen property ("Charge 3") in Cause No. 84D03-0811-FD-3644 and another count of Class D felony theft ("Charge 4") in Cause No. 84D03-0901-FD-152. The cases were consolidated, and Wells pled guilty to Charges 1, 3, and 4 on June 15, 2009. Charge 2 was dismissed. The trial court sentenced Wells to one and one-half years on Charge 1 with six months executed, one and one-half years on Charge 3 with six months executed, and one and one-half years on Charge 4 with one year executed. The court ordered the sentences served consecutively, for a total executed sentence of two years to be served on Work Release. Appellant's App. p. 140-41.

On September 3, 2009, the State filed a Petition to Revoke Direct Placement in the Work Release Program or To Revoke Probation due to Wells' positive drug test, his

possession of unauthorized property in Work Release, and his arrearage in user fees. *Id.* at 30-31. The State issued a warrant for Wells' arrest. Wells appeared in court the next day and admitted violating the terms of his direct placement. The trial court ordered Wells to serve the balance of the executed portion of his sentence, two years, at the Indiana Department of Correction. The court ordered Wells to serve two and one-half years on formal probation after his release from custody. Wells received 432 credit days toward his two-year sentence. *Id.* at 34-35.

On August 11, 2010, a Notice of Probation Violation was filed against Wells, alleging he had been arrested in both February and March 2010 in Edgar County, Illinois, for possession of cannabis. He had also been charged in Indiana on June 21, 2010, with Class A misdemeanor domestic battery. A hearing was held on October 14, 2010, at which time Wells entered into an agreement with the State. Wells admitted that he had violated the terms of his probation, and in exchange, Wells was ordered to enroll in an intensive alcohol and drug outpatient program, report to his probation officer immediately when he was released from custody and weekly thereafter, and submit to weekly drug testing. *Id.* at 106. The trial court set the matter for further proceedings on December 13, 2010, to review Wells' compliance with the trial court's orders.

Wells failed to appear at the December 13 proceeding, so it was continued until December 16. Wells again failed to appear, so a warrant was issued for his arrest. He was arrested on January 3, 2011, and the trial court conducted a hearing on January 6, 2011, at which time it revoked his probation. The court ordered that two years of Wells' previously-suspended two and one-half year sentence be served at the Indiana

Department of Correction. Wells also was to be terminated from probation unsatisfactorily in all three causes following the completion of his sentence. *Id.* at 51-52.

Wells now appeals.

Discussion and Decision

Wells contends that the trial court abused its discretion by imposing two years of his previously-suspended two and one-half year sentence because the court failed to consider his drug addiction, the treatment and effects of his addiction, and his mental state in its decision.

Probation revocation is a two-step process. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). First, the court must make a factual determination that a violation of a condition of probation has occurred. *Id.* When a probationer admits to the violation, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* At this step, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.*

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 year beyond the original probationary period; or (3) order execution on all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(g). We review a trial court's sentencing decisions for probation violations for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion

occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

Wells argues that the trial court failed to consider his drug addiction, the treatment and effects of his addiction, and his mental state at the time of his probation revocation. Appellant's Br. p. 10-11. We disagree.¹

The trial court previously considered Wells' drug addiction and the effects of his addiction when it placed him on probation in October 2010. He was ordered to enroll in an intensive outpatient program and submit to weekly drug screenings. Appellant's App. p. 46. However, he failed to follow through on this opportunity. Taking that into consideration, the trial court noted at his January 2011 hearing that "[i]nstead of sending you back to the D.O.C., tried [sic] to give you an opportunity to help yourself and you haven't availed yourself of that. I mean, I see very little option for the Court." Jan. 6, 2011, Tr. p. 14. This shows the trial court did consider Wells' drug addiction and the treatment and effects of his addiction in deciding to revoke his probation and order him to serve two years in the Indiana Department of Correction.

Additionally, to the extent that Wells argues that he needs rehabilitation and that rehabilitation cannot occur while he is in prison, this argument overlooks the fact that he has received opportunities outside the prison system to rehabilitate himself and he has not taken advantage of those opportunities. Further, his argument ignores that the Indiana prison system offers programs designed to rehabilitate inmates, including drug and alcohol classes.

¹ To the extent that Wells argues that his sentence is inappropriate, that claim is not available in post-sentence probation violation proceedings. *See Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008).

In regards to his mental state, Wells argues that the trial court should have considered the fact that he had a son born prematurely around the time of his second probation violation. However, the trial court did hear testimony from Wells about the effect that his son's premature birth had on him. Wells testified that he did not know how to deal with the situation and that his focus was on trying to mentally and emotionally support the child's mother. *Id.* at 10. However, Wells never informed his probation officer of the difficulties he was having; instead, he continued to ignore the court's orders for his probation and claimed the situation as a mitigating circumstance after the fact. The trial court did not abuse its discretion in deciding not to credit this mitigating argument when determining Wells' sentence.

Finally, before sentencing Wells, the trial court noted his four arrests within one year, two for domestic violence and two for drug offenses. This showed a clear violation of the terms of his formal probation and a blatant disregard for the opportunity provided to him by the trial court. We therefore cannot say that the trial court abused its discretion by revoking Wells' probation and imposing two years of his previously-suspended two and one-half year sentence.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.