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IN THE
COURT OF APPEALS OF INDIANA

O.V.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1005-JV-574
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
Cause No. 49D09-0902-JD-593

January 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

O.V. appeals the juvenile court's order modifying his probation by removing him from his home and placing him in a rehabilitation and treatment center in Johnson County. O.V. presents the following issues for our review:

1. Whether the State presented sufficient evidence that O.V. violated the terms of his probation.

2. Whether the juvenile court abused its discretion when it modified O.V.'s probation.

3. Whether the juvenile court erred when it placed O.V. in a facility located in Johnson County.

We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2009, the State filed a petition against O.V. alleging his delinquency for burglary and theft. In March, O.V. entered into a plea agreement whereby he admitted to the burglary allegation, and the State dismissed the theft allegation. The juvenile court placed O.V. on probation, released him to the custody of his parents for home confinement, and ordered O.V. to comply with certain conditions, including: obeying all City, County, State, and Federal laws; reporting to the probation officer; and obeying the rules and regulations imposed by his parents, including keeping them informed of his whereabouts.

On February 25, 2010, O.V.'s probation officer filed an information alleging that O.V. had violated the terms of his probation. In particular, the officer alleged that:

> 1. Youth has failed to provide Probation with verification of 15 hours of completed community service work as ordered by the Court on 4/22/2009.

> 2. On 10/7/2009, at approximately 1750 hours Youth had contact with [J.O.] at 1100 West Park Drive, Indianapolis, IN.
> 3. On 10/7/2009, at approximately 1750 hours Youth had contact with known gang members at 1100 West Park Drive, Indianapolis, IN.
>
> 4. Youth had diluted urine screens on 12/9/09 and 2/23/2010.
>
> 5. According to Youth's mother, Youth has not been abiding by the rules of the home, including but not limited to, having friends over without permission and not informing her of his whereabouts.
>
> As a result of the above-mentioned facts, the Probation Department is requesting that the dispositional decree be modified and that the Court schedule a new hearing.

Appellant's App. at 103.

On March 22, O.V.'s probation officer prepared a modification report which detailed the facts and circumstances underlying the allegations of probation violations. The probation officer prepared an addendum to that report on April 26. And on April 30, the juvenile court held a probation violation hearing. The parties stipulated that they would rely on the modification report prepared by O.V.'s probation officer "and proceed to disposition[.]" Id. at 4. Accordingly, no testimony was heard. The juvenile court incorporated the modification report and the addendum into its findings and ordered O.V. to be placed at Valle Vista, a juvenile rehabilitation facility in Johnson County. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

O.V. first contends that the State presented insufficient evidence to support the modification of his probation. A probation revocation proceeding is in the nature of a civil proceeding, and, therefore, the alleged violation need be proved only by a

preponderance of the evidence. J.J.C. v. State, 792 N.E.2d 85, 88 (Ind. Ct. App. 2003). Violation of a single condition of probation is sufficient to revoke probation. Id. As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses. Id. We look only to the evidence which supports the judgment and any reasonable inferences flowing therefrom. Id. If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate. Id.

O.V. contends that the State did not offer evidence to support any of the alleged violations of probation. But the State points out, and the CCS shows that the parties "advise[d] the Court they wish[ed] to rely on the Modification Report . . . and proceed to disposition on today's date." Appellant's App. at 4. Indeed, in addressing the court during the hearing, O.V.'s counsel acknowledged that O.V. "had some problems with complying with Probation's requirements" and presented argument only on the question of O.V.'s placement. Transcript at 4. The record shows that the parties stipulated to the evidence contained in the modification report.

The modification report and addendum include evidence that O.V. had friends over at his house without his mother's permission and violated his curfew, which proves the allegation that O.V. was not abiding by the rules of his parents' home. In addition, the modification report shows that O.V. only completed ten hours of community service before he was ejected from a program he was participating in at the Boys and Girls Club. That evidence is sufficient to support the juvenile court's determination that O.V. had

violated the terms of his probation. See J.J.C., 792 N.E.2d at 88 (proof of a single violation sufficient to revoke probation).

Issue Two: Modification of Probation

O.V. also contends that the juvenile court abused its discretion when it modified his probation. The juvenile court has wide latitude and great flexibility in its dealings with juveniles. J.S. v. State, 881 N.E.2d 26, 28 (Ind. Ct. App. 2008). The choice of the specific disposition of a juvenile adjudicated a delinquent child is a matter within the sound discretion of the juvenile court and will be reversed only if there has been an abuse of that discretion. Id. The juvenile court's discretion is subject to the statutory considerations of the welfare of the child, the safety of the community, and the policy of favoring the least harsh disposition. Id. An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual inferences that can be drawn therefrom. Id.

Here, O.V.'s sole contention is that "[m]easuring the alleged violations against the realm of possible violation, these alleged violations were not serious enough to justify the imposition of placement at Valle Vista." Brief of Appellant at 6. But O.V.'s argument on appeal ignores the evidence that while O.V. has made some progress, he has also smoked marijuana while on probation, engaged in verbal and physical violence with others, including his sister, and has not abided by his parents' rules. Indeed, O.V.'s conduct has led to his family's eviction from their apartment. O.V. has not responded to

less restrictive alternatives and has not demonstrated that the juvenile court's decision to place him at Valle Vista was clearly erroneous.

Issue Three: Placement at Valle Vista

Finally, O.V. contends that the evidence does not support his placement at a facility located outside the county of his residence. Indiana Code Section 31-34-6-3 provides in relevant part that a juvenile court may not place a child in a facility that is located outside the child's county of residence unless placement of the child in a comparable facility with adequate services located in the child's county of residence is unavailable or the child's county of residence does not have an appropriate comparable facility with adequate services. Here, O.V.'s county of residence was Marion County, and he was placed at Valle Vista, which is located in Johnson County.

Again, O.V.'s contention on this issue overlooks the fact that the parties stipulated to the evidence contained in the probation officer's modification report. O.V. asserts that no evidence to support the placement was established at the hearing. But the addendum to the modification report includes the following:

> The recommendations from [O.V.'s therapist] are for [O.V.] to "participate in intensive treatment that provides more structure and accountability than outpatient services." [O.V.] was ultimately discharged for no follow-through with scheduling appointments and due to him declining and mother declining to participate in recommended services.
>
> DCS has reported their recommendation is for Youth to participate in Family Functional Therapy. Probation would note that services cannot be provided to Spanish Speaking individuals or their families due to no one being qualified or trained to do so. Therefore, <u>this service is not offered and cannot be offered to Youth and his family as recommended by DCS</u>.
>
> If Youth were sent to Valle Vista he would not be in need of a translator, however his parents would be. Valle Vista does not have staff

> on hand to conduct therapy sessions in Spanish, but they are willing to bring in a translator for those sessions that would take place with Youth's family twice a week for an hour. Probation is requesting Youth be ordered to participate in services at Valle Vista due to them [sic] being able to treat Youth's medication and psychiatric needs.

Appellant's App. at 122 (emphasis added).

We hold that the evidence is sufficient to support the juvenile court's determination that Marion County does not have an appropriate comparable facility with adequate services. The evidence supports the juvenile court's determination that O.V. shall be placed at Valle Vista.

Affirmed.

DARDEN, J., and BAILEY, J., concur.