

STATEMENT OF THE CASE

Following a hearing on the State's second amended notices of probation violation filed in two causes, the trial court revoked Constance Phillips' probation and ordered her to serve part of the suspended portions of her sentences. Phillips presents a single issue for review, namely, whether the trial court abused its discretion when it ordered her to serve an aggregate of four years of the suspended portions of her sentences following the revocation of her probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 4, 2007, the State charged Phillips in Cause Number 31D01-0710-FD-679 ("FD-679") with possession of methamphetamine, as a Class D felony; possession of marijuana, as a Class A misdemeanor; possession of paraphernalia, as a Class A misdemeanor; neglect of a dependent, as a Class D felony; and maintaining a common nuisance, as a Class D felony. On November 3, 2008, Phillips entered into a plea agreement whereby she agreed to plead guilty to maintaining a common nuisance, as a Class D felony. In exchange, the State dismissed the remaining charges, and Phillips agreed to a three-year sentence, with two years and six months suspended, to be served consecutive to the sentence to be imposed in Cause Number 31D01-0805-FD-420 ("FD-420").

On May 29, 2008, the State charged Phillips in FD-420 with two counts of possession of precursors, as Class D felonies; possession of methamphetamine, as a Class

D felony; possession of paraphernalia, as a Class A misdemeanor; and maintaining a common nuisance, as a Class D felony. On November 3, 2008, Phillips entered into a plea agreement whereby she agreed to plead guilty to one count of possession of precursors, as a Class D felony. Pursuant to the agreement, the State dismissed the remaining charges, and Phillips agreed to a three-year sentence, with two years and six months suspended, to be served consecutive to the sentence to be imposed in FD-679. On November 5, the court accepted the plea agreements in FD-679 and FD-420 and entered judgments of conviction accordingly.¹

On November 25, 2009, the State filed petitions to revoke suspended sentence in both FD-679 and FD-420. The petitions allege in part that Phillips had violated her probation by “using illegal drugs while on probation in that she [had] tested positive for methamphetamine on November 10, 2009.” Appellant’s App. at 50, 172. On February 3, 2010, the State filed amended petitions to revoke the suspended sentence in both cases (“Amended Petitions”). The Amended Petitions each added an allegation that Phillips had possessed methamphetamine on or about November 25, 2009, and that she had refused to submit to a drug screen on January 22, 2010. And on March 4, the State filed second amended petitions to revoke the suspended sentence (“Second Amended Petitions”), again, in both cases. The Second Amended Petitions added an allegation that Phillips had committed the offense of maintaining a common nuisance on or about November 25, 2009.

¹ The sentences imposed in FD-679 and FD-420 are identical. The trial court ordered each to be served consecutive to the other but did not clarify which sentence was to be served first. Although it is not clear from the record, it appears that Phillips served the executed part of each sentence consecutively before beginning the probationary periods in each sentence.

On July 13, 2010, the court held a consolidated hearing on the Second Amended Petitions. Following the hearing, the trial court determined that Phillips had violated the terms of her probation in each case by refusing to submit to a drug screen, using illegal drugs while on probation, and committing a new offense while on probation. As a result, the court entered an order in each case revoking a part of Phillips' suspended sentences. Specifically, the court ordered Phillips to serve two years of the suspended portion of her sentence in each case, for an aggregate executed term of four years in the Department of Correction. Phillips now appeals.

DISCUSSION AND DECISION

Phillips contends that the trial court abused its discretion when it ordered her to serve two years of the suspended portion of her sentence following the revocation of her probation in both FD-679 and FD-420. “[A] trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007). As this court has often stated:

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.

Richardson v. State, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008) (quoting T.W. v. State, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007), trans. denied). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and

a “conditional liberty that is a favor, not a right.” Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied.

Phillips maintains that this court should examine the sanction imposed for her probation violations by considering the nature of her offenses and her character. But our supreme court has held that

the appellate evaluation of whether a trial court’s sanctions are “inappropriate in light of the nature of the offense and the character of the offender” is not the correct standard to apply when reviewing a trial court’s actions in a post-sentence probation violation proceeding. Prewitt v. State, 878 N.E.2d 184, 187-88 (Ind. 2007). A trial court’s action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. The review and revise remedy of App. R. 7(B) is not available.

On the other hand, probation violation sanctions are subject to appellate review for abuse of discretion. Prewitt, 878 N.E.2d at 188.

Jones v. State, 885 N.E.2d 1286, 1289-90 (Ind. 2008).

Phillips agrees that abuse of discretion is the correct standard to be applied. A trial court abuses its discretion if the decision is “clearly against the logic and effect of the facts and circumstances.” Runyon v. State, 939 N.E.2d 613, 2010 Ind. LEXIS 792, at *12. And she concedes that Appellate Rule 7(B) review does not apply to appeals from sanctions imposed for probation violations. Still, she maintains that this court may consider the nature of her probation violations and her character in determining whether the trial court abused its discretion by ordering her to serve two years in each case for an aggregate term of four years. Where relevant, probation violations and a probationer’s character may be considered in determining whether the sanction imposed for probation violations is clearly against the facts and circumstances. See id. But the probation

violations and Phillips' character do not demonstrate that the trial court abused its discretion in this case.

Here, in November 2008, Phillips was convicted of maintaining a common nuisance, as a Class D felony, in FD-679 and of possession of precursors, as a Class D felony, in FD-420 pursuant to plea agreements. Under the plea agreements, the court sentenced Phillips to three years in each case, with two years and six months in each case suspended to probation, to be served consecutively. One year later, the State filed its first petitions to revoke suspended sentence, alleging that Phillips had tested positive for methamphetamine on November 10.

Subsequently, during a home visit on November 25, a probation officer found scales hidden above ceiling tiles in Phillips' garage. Phillips admitted that she had put the scales there and thought she had cleaned them off. The scales tested positive for methamphetamine. The State subsequently filed the Amended Petitions and Second Amended Petitions, alleging that Phillips had possessed methamphetamine on November 25, was maintaining a common nuisance on November 25, and refused a drug screen on January 22, 2010. The trial court ultimately found that Phillips had violated the terms and conditions of her probation by refusing to submit to a drug screen, using illegal drugs while on probation, and committing a new offense (possession of methamphetamine).

Phillips emphasizes her compliance with the terms and conditions of probation early in her probationary period as evidence that she "is making sincere efforts to reform herself and address her drug addiction." Appellant's Brief at 10. But Phillips does not appeal the trial court's determination that she committed three probation violations, each

of which is directly related to the nature of the convictions underlying her sentence. Phillips has not shown that the trial court's decision to revoke two years of each of her suspended sentences is clearly against the logic and effect of the facts and circumstances. As such, she has not shown that the trial court abused its discretion when it revoked part of her suspended sentence and ordered her to serve the same, an aggregate of four years, in the Department of Correction.

Affirmed.

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