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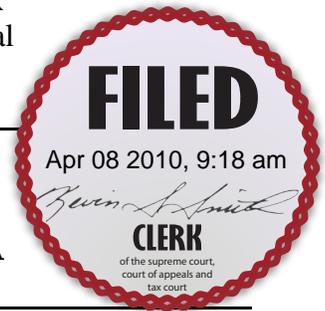
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**IN THE  
COURT OF APPEALS OF INDIANA**

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TONI L. WOODS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A04-0909-CR-532

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APPEAL FROM THE MADISON SUPERIOR COURT IV  
The Honorable David A. Happe, Judge  
Cause Nos. 48D04-0903-FD-112, 48E01-0809-FD-330, & 48E01-0810-FD-367

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**April 8, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Toni L. Woods appeals her thirty-six-month sentence for Class D felony criminal confinement and Class A misdemeanor battery. She also appeals the imposition of thirty-three months of her previously suspended sentences for Class D felony battery on a penal facility officer and Class D felony theft. We conclude that Woods' thirty-six-month sentence is not inappropriate and that the trial court did not abuse its discretion by ordering her to serve thirty-three months of her previously suspended sentences. However, after considering the oral and written sentencing statements, we conclude that one of the probation violation sentences is improperly reflected in the Abstract of Judgment and Chronological Case Summary. We therefore affirm and remand for corrections to the written sentencing statements.

## **Facts and Procedural History**

Woods was convicted of Class D felony theft in cause number 48E01-0809-FD-330 ("FD-330") and sentenced to eighteen months, all suspended. She was also convicted of Class D felony battery on a penal facility officer in cause number 48E01-0810-FD-367 ("FD-367") and sentenced to thirty-six months, twenty-four of which were suspended. These sentences were ordered to be served consecutively.

In March 2009, while Woods was incarcerated for the sentence imposed in FD-367, she trapped a fellow inmate in a cell and repeatedly struck her causing bodily injury. The State charged Woods with Class D felony criminal confinement<sup>1</sup> and Class A

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<sup>1</sup> Ind. Code § 35-42-3-3(a).

misdemeanor battery<sup>2</sup> in cause number 48D04-0903-FD-112 (“FD-112”). On the basis of these charges, the State later filed a Notice of Violation of Suspended Sentence in FD-330 and a Notice of Violation of Suspended/Executed Sentence in FD-367. In July 2009 Woods pled guilty pursuant to an open plea agreement to the charges in the more recent FD-112, which consequently operated as an admission to the violations in FD-330 and FD-367. The trial court accepted the plea agreement.

At her sentencing hearing, Woods asked the trial court to consider placing her on house arrest. She also stated that she takes Haldol because she “hear[s] voices” and Depakene for her “anger management problem.” Tr. p. 32. The trial court found as aggravators Woods’ violation of the conditions of her probation and her criminal history, and it found as mitigators her history of mental health issues and her decision to plead guilty. Finding that the aggravators outweighed the mitigators, the trial court sentenced Woods to thirty-six months with thirty months suspended for Class D felony criminal confinement and a concurrent twelve months, all suspended, for Class A misdemeanor battery. It also revoked fifteen months of her eighteen-month suspended sentence in FD-330, with no return to probation, and thirty months in FD-367, with no return to probation.<sup>3</sup> The trial court ordered the sentences in all three cause numbers to be served

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<sup>2</sup> Ind. Code § 35-42-2-1(a)(1)(A).

<sup>3</sup> We note that Woods was serving twelve months of a thirty-six-month sentence in FD-367 at the time of the instant offenses. 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 (1) year beyond the original probationary period.

consecutively, for an aggregate sentence of eighty-one months with thirty months suspended to probation. Woods now appeals the sentences in all three cause numbers.

### **Discussion and Decision**

Woods contends that her thirty-six-month sentence is inappropriate and that the trial court abused its discretion by ordering her to serve thirty-three months of her previously suspended sentences. Within her abuse of discretion argument, she also requests that we remand with instructions to correct the Abstract of Judgment and Chronological Case Summary to reflect the correct probation violation sanction in FD-330.

#### **I. Inappropriate Sentence**

Woods first contends that her thirty-six-month sentence for Class D felony criminal confinement and Class A misdemeanor battery is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind.

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(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g). As Woods’ original sentence in FD-367 was twelve months executed and twenty-four months suspended, the trial court could revoke no more than twenty-four months. We thus construe the trial court’s action as essentially revoking eighteen months of her suspended sentence so that her total time executed was thirty months. For both probation revocations, then, the trial court ordered Woods to serve thirty-three months of her previously suspended sentences: fifteen months in FD-330 and eighteen months in FD-367.

2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Woods caused bodily injury to a fellow inmate by repeatedly striking her and prevented her from escaping the cell.

As for Woods' character, we acknowledge that she has mental health issues, which was also recognized by the trial court. However, Woods' criminal record alone justifies the sentence imposed by the trial court. The Pre-Sentence Investigation Report reflects that Woods, nineteen years old at the time of these offenses, has a history of delinquent and criminal activity. As a juvenile, Woods was adjudicated a delinquent for multiple offenses, including battery, theft, and criminal mischief. As an adult, Woods has four prior convictions for battery as well as convictions for theft and criminal conversion. The fact that one of the instant offenses is a battery coupled with Woods' multiple prior battery convictions displays a violent nature and an inability to adjust her behavior. Also, Woods was incarcerated at the time of these offenses. In short, Woods has failed to persuade us that her thirty-six-month sentence is inappropriate in light of the nature of her offenses and her character.

## **II. Abuse of Discretion**

Woods next contends that the trial court abused its discretion by ordering her to serve thirty-three months of her previously suspended sentences. 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, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* Given Woods' criminal history, the trial court acted well within its discretion by ordering her to serve thirty-three months of her previous sentences for her probation violations.

### **III. Sentencing Statements**

Within her abuse of discretion argument, Woods requests that we remand with instructions to correct the Abstract of Judgment and Chronological Case Summary to reflect the correct sentence for her probation violation in FD-330. In FD-330, the trial court's oral sentencing statement revoked fifteen months of Woods' eighteen-month suspended sentence, Tr. p. 37, even though the Abstract of Judgment, Appellant's App. p. 18, and Chronological Case Summary, *id.* at 12, indicate that the trial court revoked the entire eighteen-month suspended sentence. Woods requests that we order the trial court to correct the Abstract of Judgment and the Chronological Case Summary to reflect the revocation of fifteen months of her eighteen-month suspended sentence.

When oral and written sentencing statements conflict, we examine them together to discern the intent of the sentencing court. *Hoepfner v. State*, 918 N.E.2d 695, 699 n.4 (Ind. Ct. App. 2009) (citing *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007)). We may remand the case for correction of clerical errors if the trial court's intent is unambiguous. *See Willey v. State*, 712 N.E.2d 434, 445 n.8 (Ind. 1999) ("Based on the unambiguous nature of the trial court's oral sentencing pronouncement, we conclude that the Abstract

of Judgment and Sentencing Order contain clerical errors and remand this case for correction of those errors.”)

Here, the trial court stated, “I think that the probation department has accurately described the aggravation and mitigation and made a good recommendation in the case and the court intends to adopt that recommendation.” Tr. p. 34. Regarding the probation violation in FD-330, the trial court stated that “fifteen (15) months of the eighteen (18) month exposure will be revoked and served at the Department of Correction[ ]” with no return to probation. *Id.* at 37. This sentence matches the recommendation of the probation department. *See* Appellant’s App. p. 31 (“[T]he Probation Department recommends full revocation of fifteen (15) months of the 18 month exposure to the Indiana Department of Correction, with no return to probation in this cause . . .”).

Given the unambiguous nature of the trial court’s pronouncement in light of its acknowledgement that it was adopting the recommendations of the probation department, we conclude that the Abstract of Judgment and Chronological Case Summary for FD-330 contain clerical errors by indicating that Woods’ entire eighteen-month suspended sentence was revoked. We therefore remand for corrections.

Affirmed and remanded for corrections to the written sentencing statements consistent with this opinion.

NAJAM, J., and BROWN, J., concur.