

STATEMENT OF THE CASE

Appellant David Eugene Ball appeals the termination of his work release. We affirm.

ISSUES

Ball raises two issues for our review, which we restate as:

- I. Whether the trial court abused its discretion in terminating work release upon a condition not listed in the petition.
- II. Whether the trial court's termination of work release in two cases was an abuse of discretion and excessive.

FACTS AND PROCEDURAL HISTORY

On January 8, 2008, in Cause No. FD-11 ("FD-11"), the State charged Ball with battery, a Class D felony and intimidation, a Class A misdemeanor. Ball pled guilty to both offenses, each as a Class A misdemeanor. Ball was sentenced to concurrent twelve-month terms to run consecutive to Ball's sentence in Cause No. FD-61 ("FD-61"). The sentence was suspended to twelve months probation. However, Ball violated the terms of probation, and on April 28, 2009, his suspended sentence was revoked and he was ordered to serve twelve months in the Madison County Detention Center. The sentence at the Center was suspended, with Ball being allowed to serve his sentence in the Madison County Work Release facility after the termination of his sentence under FD-61.

On December 29, 2008, in Cause No. FD-440 (“FD-440”), the State charged Ball with numerous counts, and Ball pled guilty to resisting law enforcement, a Class A misdemeanor; driving while suspended, a Class A misdemeanor; and operating while intoxicated, a Class D felony. The court sentenced Ball to thirty-six months, with eighteen months suspended, and eighteen months to be served at the Madison County Work Release center.

On July 23, 2009, the Madison County Probation Department filed a notice of violation of probation in FD-440. The notice alleged that Ball had violated a term of his work release by committing the offense of battery.

On July 30, 2009, the Madison County Work Release Center filed a “Petition to Terminate Work Release Privilege” in FD-11. (Appellant’s App. at 62). The petition alleged that “[o]n 7/15/2009 Mr. Ball was removed from Work Release and arrested by the Anderson Police Department because of a warrant out of Anderson City Court” and that Ball had an arrearage in his work release fees. *Id.*

On August 31, 2009, the trial court held a hearing on both petitions. At the termination of the hearing, Ball was found to have committed battery on June 28, 2009 against Nathan Taliaferro. The battery resulted in bodily injury to the victim. The trial court found that by committing the battery, Ball had violated the terms of his suspended sentences in both FD-440 and FD-11. In FD-440, the trial court ordered the termination of work release privileges and the suspended sentence. The trial court further ordered that Ball serve thirty-four months in the Indiana Department of Correction. In FD-11, the

trial court ordered the termination of work release privileges and sentenced Ball to twelve months in the Madison County Detention Center.¹ Ball was given credit for 122 days, leaving a balance of 243 days under FD-11.

Ball now appeals.

DISCUSSION AND DECISION

I. DUE PROCESS

Violation of a single condition of probation is sufficient to support revocation of that probation. *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). If there is substantial evidence of probative value to support the trial court's decision that the probationer is guilty of a violation, we will affirm the revocation of probation. *Id.* A petition to revoke participation in a community corrections program, which includes work release, is reviewed in the same manner as a petition to revoke probation. *See Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction, and both are made at the sole discretion of the trial court. *Id.* A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Id.* (citing *Million v. State*, 646 NE2d 998, 1001 (Ind. Ct. App. 1995)).

¹ The record discloses with regard to FD-11 that Ball was serving probation while waiting for a bed in the work release facility.

Ball contends that the trial court abused its discretion in ordering termination of work release in FD-11 because even though the State proved that he committed a criminal offense on June 28, 2009, it failed to show he committed the acts alleged in the “Petition to Terminate Work Release Privilege.” Although a probationer is not entitled to the full array of rights afforded at trial, certain due process rights inure to a probationer at a revocation hearing. *Bovie v. State*, 760 N.E.2d 1195, 1199 (Ind. Ct. App. 2002); *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). These rights include written notice to the probationer of the claimed violation which is sufficiently detailed to allow the probationer to prepare an adequate defense. *Id.* The State’s failure to give written notice of a claimed probation violation is an error that deprives the defendant of adequate due process. *Id.*² However, such error may be harmless. *Id.*

Ball clearly had notice that one of the conditions of probation, and thus work release, is that the probationer not commit a criminal offense while serving his sentence outside an Indiana prison. Indeed, such a condition is “automatically a condition of probation by operation of law.” See *Atkins v. State*, 546 N.E.2d 863, 865 (Ind. Ct. App. 1989). Because of the consolidated hearings, Ball had notice of the battery allegation and he put on a defense against that allegation. Here, Ball was not prejudiced by the State’s failure to be more specific in the FD-11 petition, as he had the opportunity to, and did, present a relevant defense.

II. SENTENCING

² As stated above, the law applying to probation revocation also applies to community corrections cases. See *Cox, id.*

Ball contends that the trial court abused its discretion in imposing “consecutive sentences under separate cause numbers . . . for a single violation.” (Appellant’s Brief at Ball argues that the termination of his work release in both FD-440 and FD-11 is excessive.

Probation, and therefore lesser sentences like work release, is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. See *Prewitt v. State*, 879 N.E.2d 184, 188 (Ind. 2007). Once a trial court has exercised its grace by ordering probation or some other sentence short of incarceration, the court should have considerable leeway in deciding how to proceed upon the violation of the conditions linked to the lesser sentence. *Id.* If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial courts might be less inclined to order probation and other alternative sentences. *Id.* Accordingly, a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

Here, Ball emphasizes that his work release in two separate cases was terminated because of one offense. We cannot say that the trial court abused its discretion in terminating work release in both cases. The record shows that Ball had earlier violated the terms of his probation in FD-11, and he was extended further grace by the trial court. As the trial court noted, Ball has an extensive criminal history that includes resisting law enforcement, numerous battery convictions, and probation violations. The trial court did

not abuse its discretion in determining that this new battery capped a pattern of offenses that warranted termination of work release in both FD-440 and FD-11. Furthermore, we do not find the withdrawal of spurned grace to be excessive.

Affirmed.

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