

Jonathan R. Hodgson appeals the imposition of 545 days of his previously suspended 2-year sentence following the violation of several conditions of his probation. He presents the following restated issue for review: Did the trial court abuse its discretion in sanctioning Hodgson?¹

We affirm.

In May 2007, the State charged Hodgson with class B felony sexual misconduct with a minor. Pursuant to a plea agreement executed a year later, Hodgson pleaded guilty to a reduced charge of class D felony sexual misconduct with a minor. Sentencing was left open, and the trial court sentenced him to three years, with one year executed and two years suspended to probation. Because of his time served prior to sentencing, Hodgson was immediately placed on probation.

On September 22, 2008, which was four and one-half months after being placed on probation, the State filed a notice of probation violation against Hodgson. The State alleged that Hodgson had failed to: (1) make payments toward his court-ordered debt; (2) maintain full-time employment; (3) complete court-ordered community service; (4) report to the probation department as directed; and, (5) make progress in sex offender treatment. The allegations were specifically explained in the petition as follows:

Mr. Hodgson was placed on probation on 5/7/08. He was allowed to transfer his probation to Hamilton County. At that time, it was explained to Mr. Hodgson that he would still be responsible for sending monthly probation payments to Marion County. To date, he has not made a single payment.

¹ Relying upon Indiana Appellate Rule 7(B), Hodgson actually argues that the sanction is inappropriate in light of his character and the nature of the offense. Our Supreme Court, however, has clearly stated that this is “not the correct standard to apply when reviewing a sentence imposed for a probation violation.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

This Officer received a violation report from Hamilton County on 9/9/08. His Hamilton County Officer, Joy Nun, indicated that Mr. Hodgson has been completely noncompliant. He was found in his residence on 7/1/08 with his toddler nephew. Mr. Hodgson indicated that he thought he was allowed to be around minor family members. Mr. Hodgson's conditions of probation were explained to him again.

Mr. Hodgson has not maintained employment for the duration of his probation. On 6/17/08, he was told that he must complete 8 hours of Community Service Work per week until he obtained full time employment. Mr. Hodgson has only completed 2 days of Community Service Work and owes 144 hours of Community Service Work to Hamilton County.

Although Officer Nun attempted home visits every 2 weeks and Mr. Hodgson has been unemployed, she has not been able to find him at his reported residence since 7/1/08, when he was found with his toddler nephew. He was late for office appointments on 8/1/08 and 8/5/08. He failed to report for a scheduled appointment on 9/5/08. Officer Nun left messages for him on his home and cell telephone on 9/5/08, 9/8/08, 9/9/08, and 9/12/08, and Mr. Hodgson would not return her call. This Officer left a message for him on his home telephone on 9/15/08, telling him that if he did not contact Hamilton County by 3 p.m. on 9/16/08, this Officer would file a violation and request a warrant. Mr. Hodgson did call Hamilton County at 3 p.m. on 9/16/08. He was told that he must report for an office visit on 9/17/08 at 10:00 a.m. He failed to report.

Mr. Hodgson missed two Sex Offender Treatment groups in August. His counselor reports that he is not making any progress in group and still struggling with his first assignment, which has to be redone due to lack of detail and quality. This Officer has notified Hamilton County that they can close interest in Mr. Hodgson's case and that he will need to return to Marion County for supervision.

Appendix at 62-63.

At the probation revocation hearing on November 5, 2008, Hodgson admitted the alleged probation violations.² He offered various explanations in mitigation of each violation. At the conclusion of the hearing, the court revoked Hodgson's probation and

² With respect to sex offender treatment, Hodgson admitted that he had failed to attend a couple meetings but denied that he had failed to make progress.

ordered execution of 545 days of the previously suspended sentence. Hodgson now appeals, noting that much of his difficulties in completing his probationary tasks related to his lack of transportation.

We observe that probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184. “The trial court determines the conditions of probation and may revoke probation if the conditions are violated.” *Id.* at 188. Further, Indiana Code Ann. § 35-38-2-3(g) (West, PREMISE through 2008 2nd Regular Sess.) provides that upon finding a violation of probation, a trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” The decision to revoke probation is within the sound discretion of the trial court, and the trial court’s decision is reviewed on appeal only for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008).

The trial court explained its decision to order execution of part of the sentence as follows:

I can understand the difficulty making payments. I can understand the difficulty in maintaining full time employment but the failure to report and the failure to complete community service work are much more serious allegations and frankly I’m at a loss how the defendant could ignore those obligations. Blithely coming in and explaining that it’s difficult to make arrangements, it’s difficult to find a ride doesn’t really cut it, Mr. Hodgson[,] and curiously the fact that you have familial support at a hearing of this nature undercuts those arguments. You were placed on the strictest probation we have and it appears from the record that you have disregarded your obligations. I will acknowledge that you admitted the allegations and by virtue of that I am not going to give you your full back up time, however, I am going to revoke your probation and I am going to order you remanded to the Department of Correction to serve 545 days....

Transcript at 15. The trial court's reasoning is sound, and we find no abuse of discretion in its decision to order execution of 545 days of the previously suspended sentence.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.