



Richard C. Anthon appeals the revocation of his probation and the execution of his previously suspended sentence. Anthon presents the following restated issue for review: Did the revocation court err in executing the entire term of the suspended sentence?

We affirm.

The facts favorable to revocation are that on March 14, 2004, Anthon was sentenced to ten years in prison, with nine and one-half years suspended to probation, upon his plea of guilty to burglary as a class B felony. On April 25, 2005, Anthon was found to have violated the conditions of probation based upon the finding that he consumed alcohol. The court executed 365 days of the previously suspended portion of his sentence. On January 11, 2006, he was found guilty of a second probation violation involving the consumption of alcohol. For this violation, the court executed 730 days of the previously suspended portion of his sentence. On September 11, 2007, Anthon failed a drug screen, testing positive for cannabinoids and opiates. A third notice of probation violation was filed. At the December 4, 2008 dispositional hearing, Anthon admitted the violation. As a result, the trial court revoked his probation and executed the remaining six and one-half years of Anthon's suspended sentence. Anthon appeals the latter ruling.

We initially observe that probation is a conditional liberty that is a favor, not a right. *See Kincaid v. State*, 736 N.E.2d 1257 (Ind. Ct. App. 2000). It is a criminal sanction whereby a defendant specifically agrees to accept restrictions upon his behavior in lieu of imprisonment. *Abernathy v. State*, 852 N.E.2d 1016 (Ind. Ct. App. 2006). These restrictions are designed to ensure that probation serves as a period of genuine rehabilitation and the

public is not harmed by a probationer living in the community. *Id.* If there is substantial evidence of probative value to support the trial court's decision that the probationer violated the conditions of probation, revocation is appropriate. *M.J.H. v. State*, 783 N.E.2d 376 (Ind. Ct. App. 2003), *trans. denied*. Generally, as long as the trial court follows the procedures outlined in Ind. Code Ann. § 35-38-2-3 (West, PREMISE through 2008 2nd Regular Sess.), it may properly order execution of a suspended sentence. *Abernathy v. State*, 852 N.E.2d 1016.

I.C. § 35-38-2-3(g) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) 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.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

“A defendant is entitled to dispute on appeal the terms of a sentence ordered to be served in a probation revocation proceeding that differ from those terms originally imposed.” *Stephens v. State*, 818 N.E.2d 936, 939 (Ind. 2004). This means, among other things, that a probationer may challenge the reasonableness of the executed portion of the previously suspended sentence in view of “the nature of the violations and the character of the offender.” *Id.* at 942.

We review a trial court's decision to revoke probation and its sentencing decision in a probation revocation proceeding for an abuse of discretion. *Abernathy v. State*, 852 N.E.2d

1016. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.* When reviewing a trial court's decision to execute a previously suspended sentence upon a finding of violation of the conditions of probation, we do not review the propriety of the defendant's original sentence. *Id.*

Anthon violated a term of his probation by using illegal drugs. “[U]ltimately it is the trial court’s discretion as to what sanction to impose under [I.C. § 35-38-2-3(g),]” and the trial court was statutorily authorized to execute all of Anthon’s previously suspended sentence. *Abernathy v. State*, 852 N.E.2d at 1022. Moreover, Anthon violated the terms of his probation on two prior occasions and, although a portion of the sentence was thereafter executed each time, a portion was not and therefore Anthon was shown leniency by the trial court. Yet, this did not reform his behavior. Anthon seeks to counter this by offering the following: “[I]n a situation such as this where it is clear that the defendant has a drug addiction, the trial court’s imposition of the entire suspended sentence can be an abuse of discretion.” *Appellant’s Brief* at 4-5. Perhaps it *can*, but Anthon has failed to explain why in this case it *is* an abuse of the trial court’s discretion. The facts as set forth above, including multiple violations of the conditions of probation, demonstrate that the trial court had ample basis for its decision to order Anthon to serve the remainder of his suspended sentence. The trial court, therefore, did not abuse its discretion by ordering Anthon to do so.

Judgment affirmed.

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