



Shawn T. Parker (“Parker”) appeals the trial court’s order revoking his probation and ordering him to serve the balance of his executed sentence for each of two separate convictions for nonsupport of a dependent child. On appeal, Parker raises the following restated issues:

- I. Whether there was sufficient evidence of probation violations to warrant the revocation of Parker’s probation; and
- II. Whether the trial court abused its discretion in ordering Parker to serve the balance of his originally suspended sentences.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On March 5, 2008, Parker pleaded guilty to two charges of nonsupport of a dependent child,<sup>1</sup> each as a Class D felony; one under cause number 40C01-0711-FC-283 (“Cause No. 283”) and the other under cause number 40C01-0711-FC-284 (“Cause No. 284”).<sup>2</sup> The trial court sentenced Parker to thirty-six months for each conviction, to be served consecutively, but gave him credit for time served and ordered the remainder of his sentence suspended to probation provided that he comply with the terms of probation for thirty-four months. As a condition of probation, Parker was required to “support his dependents and meet all other family responsibilities, including timely payment of child support.” *Appellant’s App.* at 18, 23. As an additional term of probation, the trial court ordered that “[Parker] shall not test positive for any illegal substance.” *Id.* at 19, 24.

---

<sup>1</sup> See Ind. Code § 35-46-1-5.

<sup>2</sup> Cause No. 283 pertained to nonsupport of the four children that Parker had during his relationship with D.A.B, while Cause No. 284 pertained to nonsupport of the one child that Parker had while in a relationship with S.L.G.

On August 13, 2008, the probation department filed its first petition to revoke or modify probation alleging that Parker had violated his probation, in part, because he had failed to pay child support as ordered. Following a hearing, the trial court denied the State's petition finding that Parker's nonpayment was caused by the probation department's refusal to allow him to work out-of-state, which, in turn, forced him to quit a well-paying job in Kentucky. *Id.* at 115.

In January 2009, Parker tested positive for cocaine.<sup>3</sup> Parker had various jobs during the months of August 2009 through February 2010, yet made sporadic and minimal monthly payments for each of his child support obligations. On February 17, 2010, the probation department filed a second petition to revoke or modify probation alleging that Parker had tested positive for cocaine and had failed to make his child support payments as ordered.

At the June 29, 2010 hearing, the trial court heard testimony from Parker, from his probation officer, and from D.A.B. (the mother of four of his children), which revealed that Parker owed \$42,293.63 in unpaid child support in Cause No. 283, and \$10,448.11 in unpaid child support in Cause No. 284. In a July 13, 2010 order, the trial court made the following pertinent findings:

- 1.) When convicted of Non-Support in [Cause No.] 283 on March 5, 2008, Defendant was [\$27,187.20] in arrears in payment of child support.

---

<sup>3</sup> The first petition to revoke Parker's probation was filed on August 13, 2008—a date before Parker tested positive for cocaine. At the first revocation hearing, which was held seven months after Parker tested positive, the State tried to raise the failed drug test as a reason to revoke Parker's probation. Following defense counsel's objection to consideration of the issue, the State noted: "I understand it appears that [the drug test] was not filed and ... I don't think we'll pursue that any further. But it may be filed." *Tr.* at 7. The positive drug test was, in fact, filed in connection with the State's second petition to modify or revoke probation. *Appellant's App.* at 36-37.

As of June 29, 2010, the arrearage is [\$42,293.63] . . . .

2.) When convicted of Non-Support in [Cause No. 284] on March 5, 2008, Defendant was [\$7,085.28] in arrears in payment of child support. As of June 29, 2010, the arrearage is [\$10,448.11] . . . .

3.) In addition, on January 5, 2009, Defendant tested positive for cocaine metabolite. However, Defendant flatly denied using any cocaine based substance, prior to January 5, 2009, and has no explanation why he would test positive.

4.) Condition of Probation #6 reads as follows:

*You shall support your dependents and meet all other family responsibilities, including timely payment of child support, if ordered to pay support.*

5.) After a consideration of the holding in *Runyon v. State*, 923 N.E.2d 440 (Ind. [Ct.] App. 2010), the Court finds by a preponderance of the evidence, that Defendant has violated his probation.

. . . .

7.) Mr. Parker's non-payment of child support since March 5, 2008 is reckless, knowing and intentional because Mr. Parker is a healthy, able-bodied young man able to support his children. He has worked during that period and not always paid his child support.

. . . .

9.) Defendant's reduction in income since his child support was recalculated should have been addressed in the civil cases. It is not a defense in this case. Further, even if the Court were to accept Defendant's argument, his payments have been so thin, it doesn't matter.

. . . .

*Appellant's App.* at 38-39. Based on these findings, the trial court revoked Parker's probation and ordered that he serve his previously suspended sentence. Parker now appeals.

## DISCUSSION AND DECISION

### I. Probation Revocation

Parker contends that the State did not present sufficient evidence to support the trial court's revocation of his probation. Specifically, he argues that the State did not present evidence that he "recklessly, knowingly or intentionally failed to pay" child support as required by Indiana Code section 35-38-2-3(f).

The decision to revoke probation is within the sole discretion of the trial court, and its decision is reviewed on appeal for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). On review, we consider only the evidence most favorable to the judgment without reweighing the evidence or judging the credibility of the witnesses. *Id.* If there is substantial evidence of probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation. *Id.* at 639-40.

First, we note that a trial court may revoke a person's probation upon evidence of a violation of any single term of probation. *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). During the revocation hearing, the trial court heard testimony regarding Parker's positive drug test results; from this, the State proved by a preponderance of the evidence that Parker violated the probation condition that he "not test positive for any illegal substance." *Id.* at 19, 24. While this violation alone was sufficient to revoke probation, we also address the merits of Parker's contention—that the trial court abused its discretion by revoking his probation for failure to pay child support as ordered.

Our legislature has pronounced that the payment of child support is an appropriate condition of probation. *Gustman v. State*, 660 N.E.2d 353, 356 (Ind. Ct. App. 1996) (citing Ind. Code § 35-38-2-2.3(a)(4)), *trans. denied*. However, our legislature has also expressed that, “Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.” I.C. § 35-38-2-3(f). The burden of proof is on the State to establish both that the probationer violated probation by failing to pay support *and* that the nonpayment was done knowingly, recklessly, or intentionally. *Runyon v. State*, 939 N.E.2d 613, 616 (Ind. 2010). During the revocation hearing, the State presented evidence regarding the jobs that Parker held and the salary he earned during the time in question; the child support payments Parker made from August 2009 until the time of the hearing; and the increase of Parker’s arrearage from the date of his conviction to the date of the hearing. Rejecting Parker’s claim that his ordered payments exceeded his salary,<sup>4</sup> the trial court held that this was of no import because, even if Parker’s child support payments were too high in relation to his salary, Parker’s payments had been “so thin” that this distinction “doesn’t matter.” *Appellant’s App.* at 39. The trial court noted that Parker is a healthy, able-bodied young man who “has worked during that period and not always paid his child support.” *Id.* at 38-39. The trial court did not abuse its discretion in finding that Parker’s failure to pay his child support was done knowingly, recklessly, or intentionally. *Runyon*, 939 N.E.2d at 616. The State presented sufficient

---

<sup>4</sup> The trial court noted that Parker’s claim that his child support payments were too great was an issue that should have been addressed in a petition to modify support in the civil paternity action and not in the criminal suit. *Appellant’s App.* at 39.

evidence to support the trial court's revocation of Parker's probation.

## **II. Imposition of Suspended Sentences**

Parker also contends that the trial court abused its discretion in imposing his suspended sentences. For a trial court to revoke probation and reinstate part or all of a defendant's remaining sentence, it is not enough for the State to prove that the probationer has violated a financial condition of probation and that the violation was done with a reckless, knowing, or intentional state of mind. *Runyon*, 939 N.E.2d at 616. A trial court must also find that the probationer had the ability to pay. *Id.* Our Supreme Court recently held in *Runyon*, that "it is the defendant probationer's burden . . . to show facts related to an inability to pay and indicat[e] sufficient bona fide efforts to pay so as to persuade the trial court that further imprisonment should not be ordered." *Id.* at 617.

The State initially filed a petition to revoke Parker's probation on August 13, 2008, claiming, in part, that Parker had failed to pay child support. During a hearing on the matter, the trial court heard evidence regarding Parker's nonpayment as to both child support orders, as well as testimony that Parker's probation officer had prevented him from keeping gainful employment in Kentucky. *Tr.* at 11-17. At the conclusion of the hearing, the trial court stated, "The probation department would not let him keep that job in Kentucky. That's the reason he's been unable to pay child support and those fees and fines. The trial court, being persuaded that Parker's inability to pay was not of his making, denied the State's petition to revoke Parker's probation.

The trial court was not similarly convinced, however, as to Parker's inability to pay regarding the State's second petition to revoke Parker's probation, the granting of

which is the subject of this appeal. The State filed its second petition on February 17, 2010, alleging, in part, that Parker failed to pay his child support for all of his children. Parker again attempted to persuade the trial court that he should not be imprisoned because he did not have the ability to pay because he was prevented from keeping his job in Kentucky. *Id.* at 139-40; *see also Runyon*, 939 N.E.2d at 617 (to persuade trial court against imposing further imprisonment, defendant must show facts related to inability to pay child support and indicate sufficient bona fide efforts of attempts to pay). He also argued that his salary was insufficient to meet his obligations. *Runyon*, 939 N.E.2d at 140-45. The trial court, however, was not convinced that Parker had made bona fide efforts to pay the child support. The trial court found that, from the date Parker was initially placed on probation until the time of the second hearing, he was an additional \$15,106.43 in arrears for Cause No. 283 and an additional \$3,362.83 in arrears for Cause No. 284. Furthermore, although Parker had often worked during the period in question, he still “had not always paid his child support.” *Appellant’s App.* at 39. The trial court found that Parker’s “payments have been so thin” that even a claim that his payments were too high was no defense. *Id.* Frustrated by Parker’s ongoing arrearage and lack of efforts to pay, the trial court stated, “This Court has wrestled with Mr. Parker for years and enough is enough. His entire suspended sentence in both cases is revoked, and he is committed to the Indiana Department of Correction to serve his sentence of thirty-four (34) months in each case, consecutive to one another.” *Id.*

“Probation is a matter of grace left to trial court discretion, not a right to which a defendant is entitled.” *Runyon*, 939 N.E.2d at 618 (quoting *Prewitt v. State*, 878 N.E.2d

184, 188 (Ind. 2007)). ““Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.”” *Id.* (quoting *Prewitt*, 878 N.E.2d at 188). A trial court’s probation decision is subject to appellate review for abuse of discretion. *Id.* Here, the trial court initially placed Parker on probation and denied the State’s first petition to revoke his probation. Only after the State presented evidence in its second petition to revoke, did the trial court impose Parker’s previously-suspended sentences. Under the facts of this case, we decline to find that the trial court abused its discretion by ordering Parker to serve, consecutive to each other, his previously suspended thirty-four month sentences.

Affirmed.

CRONE, J., and BRADFORD, J., concur.