



## STATEMENT OF THE CASE

Randall E. Willis appeals the trial court's finding that he violated the terms of his probation and its order that he serve the previously suspended four-year sentence at the Department of Correction.

We affirm.

### ISSUES

1. Whether the State presented sufficient evidence to support the trial court's finding that Willis had violated the terms and conditions of his probation.
2. Whether the trial court's order that Willis serve his previously suspended sentence was an abuse of discretion or inappropriate.

### FACTS

On April 16, 2004, Willis was charged with burglary, theft, and criminal mischief in Fountain County. On June 14, 2004, Willis and the State tendered to the trial court a written plea agreement providing that in order to have the "B felony" burglary charge "reduced" and the "other counts dismissed," Willis would plead guilty to burglary as a class C felony, and the State would forgo prosecution of the theft and criminal mischief charges. (App. 20). The plea agreement left sentencing to the trial court's discretion. On August 5, 2004, the trial court accepted Willis' guilty plea, entered judgment of conviction, and sentenced him to the Department of Correction for four years, "said sentence suspended and Defendant placed on probation for 4 years upon" specific court-ordered "terms and conditions" of probation. (App. 23). On August 13, 2004, Willis

signed the advisement of these, and other, general terms and conditions for his four-year term of probation.

Shortly thereafter, on October 25, 2004, a notice of probation violation was filed alleging that on October 15, 2004, Willis had been charged in Montgomery County with public intoxication, mischief, and illegal consumption. On January 7, 2005, a supplemental notice of probation violation was filed alleging that on December 24, 2004, Willis had failed a drug test. On January 21, 2005, Willis appeared before the trial court and admitted the probation violations; the trial court revoked 29 days of his probation.

On December 6, 2005, a notice of probation was filed alleging that Willis had been arrested on November 29, 2005, in Montgomery County, and that criminal charges – including aggravated battery, a class B felony – had been filed against him. The trial court held a fact-finding hearing on August 22, 2006.

Robin Hegg of the Fountain County Probation Department testified that Willis had been assigned to her supervision when he was placed on probation in August of 2004. The terms and conditions of probation – signed by Willis on August 13, 2004, in Hegg's presence – were entered into evidence. Also entered into evidence, without objection, was the certified copy of the information filed in Montgomery County on December 8, 2005, alleging that Willis had committed aggravated battery, battery with a deadly weapon, and battery resulting in bodily injury. Specifically, the information alleged that at a Montgomery County motel, Willis "bit the nose . . . and fractured the leg" of a man, cut the man "on the leg and the ear . . . while armed with a . . . knife," and "bit [the man] about the head, face, and legs." (Ex. 2). The probable cause affidavit was included in

this exhibit. The affidavit averred that the man was found “bleeding heavily” and “missing a portion of his left ear”; Willis was found in the motel, and “what appeared to be a piece of an ear” lay on the bed nearby; Willis had “blood about his mouth and on his hands” and “a strong odor of alcohol emanat[ing] from his person; the man reported that Willis “just snapped . . . and “beg[a]n fighting,” “had bitten his nose” and “had been armed with a knife during the fight”; during the attack, the man had taken Willis’ knife from him, and he gave it to police; the man’s leg was fractured, a portion of his left ear had been “severed,” and he had “injuries . . . consistent with knife wounds”; and that Willis, having “become alert, was interviewed and stated that “he didn’t remember what happened” but “did ask where his knife was.” (Ex. 2). Finally, Hegg testified that by comparing the “Randall E. Willis” name and April 9, 1986 birth date shown on the Montgomery County charging information with that of her probationer, she determined that Willis was the person charged therein.

In argument, Willis’ counsel cited *Martin v. State*, 813 N.E.2d 388 (Ind. Ct. App. 2004), for the proposition that “an arrest alone or the filing of a charge alone does not warrant revocation of probation, rather there must be evidence submitted from which the court can find that an arrest was reasonable and that there was probable cause to believe that the defendant committed or violated criminal law.” (Tr. 11).

The trial court concluded that the State had

sustained its burden, that there is sufficient probable cause for the issuance of a warrant for the arrest of Randall E. Willis, that the identification made by probation confirms that the Randall E. Willis arrested in Montgomery Circuit Court is one and the same as the Randall E. Willis on probation in Fountain County.

(Tr. 13). It then found that Willis had violated the terms and conditions of probation, revoked the suspended sentence, and ordered Willis to serve at the Department of Correction the four-year sentence – less credit for his time in jail.

## DECISION

### 1. Sufficiency of the Evidence

We have summarized the law applicable upon a challenge to the revocation of probation as follows:

Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. *Bonner v. State*, 776 N.E.2d 1244, 1247 (Ind. Ct. App. 2002), *trans. denied* (2003) (citing *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999)). These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. *Id.*

A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999); *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), *trans. denied*. Therefore, upon finding that a probationer has violated a condition of probation, a court may either continue probation, with or without modifying or enlarging the conditions, extend probation for not more than one year beyond the original probationary period, or order execution of the initial sentence that was suspended. IC 35-38-2-3(g).

. . . . The decision whether to revoke probation is a matter within the sound discretion of the trial court. *Dawson v. State*, 751 N.E.2d 812, 814 (Ind. Ct. App. 2001). A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Cox*, 706 N.E.2d at 551 (citing *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995)); *McKnight v. State*, 787 N.E.2d 888, 893 (Ind. Ct. App. 2003). . . .

On review, our court considers only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. *Packer v. State*, 777 N.E.2d 733, 740 (Ind. Ct. App. 2000); *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will

affirm its decision to revoke probation. *Cox*, 706 N.E.2d at 551; *Packer*, 777 N.E.2d at 740; *Piper*, 770 N.E.2d at 882.

*Brabandt v. State*, 797 N.E.2d 855, 860 –61 (Ind. Ct. App. 2003).

Willis first argues that the evidence was not sufficient to support the trial court’s conclusion that he violated a condition of probation. Specifically, he asserts that the evidence is insufficient to “establish by a preponderance of the evidence that the Randall Willis arrested in Montgomery County is the same Randall Willis on probation in Fountain County,” and that he “violated his probation by committing the offense of aggravated battery.” Willis’ Br. at 3. We cannot agree.

According to the information, the defendant charged in Montgomery County was “Randall E. Willis,” born on April 9, 1986. The pre-sentence investigation report (PSI) for Willis establishes that such is his name and date of birth. This evidence is sufficient to prove by a preponderance that criminal charges were filed against Willis in Montgomery County on December 6, 2005.

According to the probable cause affidavit, the man alleged that Willis had attacked him with a knife and bitten him and that he had managed to take Willis’ knife away from him; Willis was found with blood about his hands and mouth; and Willis inquired about the whereabouts of his knife, *i.e.*, admitted that he had had a knife. This evidence, along with other evidence noted in FACTS, is sufficient to support the trial court’s conclusion “that [Willis’] arrest was reasonable and that there was probable cause for belief that [Willis] violated a criminal law. *Martin*, 613 N.E.2d at 391; *see also Pitman v. State*, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001) (“[I]f the trial court, after a hearing, finds that the

arrest was reasonable and there is probable cause to believe the defendant violated a criminal law, revocation will be sustained.”).

## 2. Order to Serve Previously Suspended Sentence

Willis also argues that it was “an abuse of discretion and inappropriate” for the trial court to have revoked his probation. Again, we disagree.

In the context of a probation revocation, an abuse of discretion “occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before the court.” *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). In addition, as already noted, probation is “a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. *Id.*; see also *Bonner*, 776 N.E.2d at 1247. Willis had agreed to the terms and conditions that he “not violate any laws,” “not consume . . . any alcoholic beverage,” and “not . . . use any illegally [sic] controlled substances” for a period of four years. (Ex. 1). Within months of so agreeing, it was alleged that Willis had violated laws, consumed alcohol, and consumed illegal drugs. He admitted that he had committed these violations of probation. However, the trial court did not revoke his probation at that time, but rather allowed him to continue serving his sentence on probation. Subsequently, Willis was charged with three felonies involving violence, and the evidence sustained that such charges were reasonable and based upon probable cause. That the trial court then revoked his probation was not a decision against the facts and circumstances of the facts presented. Therefore, the revocation was not an abuse of discretion.

Willis further argues that the order that he serve the previously suspended sentence is “inappropriate,” citing Indiana Appellate Rule 7(B)<sup>1</sup> and *Stephens v. State*, 818 N.E.2d 936 (Ind. 2004). *Stephens* stated that 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.” *Id.* at 939. Arguably, because the “terms originally imposed” were four years suspended and served on probation, and the “probation revocation proceedings” order was that he serve the term at the Department of Correction, *Stephens* would mandate that we consider his argument. *Id.* Nevertheless, we find it unpersuasive.

Willis argues that he “needs treatment, not just punishment,” and brings to our attention that he “has a substance abuse problem and has been diagnosed as psychotic, manic-depressive, and ADHD.” Willis’ Br. at 5. However, the record reflects that Willis reported having taken “drug/alcohol classes in jail” and that he “did not like them.” (PSI at 6). Willis also reported that he “d[id not] believe the diagnosis” of mental problems. *Id.* Thus, there was no evidence before the trial court indicating that Willis was amenable to treatment.

As to the nature of the underlying criminal offense, Willis admitted that in April of 2004, he had burglarized a woman’s home, a class C felony offense. He was sentenced to the presumptive four-year term. *See* Ind. Code § 35-50-2-6. However, that four-year sentence was suspended, and he was ordered to serve four years on probation. After two

---

<sup>1</sup> Indiana Appellate Rule 7(B) provides that the appellate court “may revise a sentence” that it finds to be “inappropriate in light of the nature of the offense and the character of the offender.”

separate instances in which he admitted having failed to comply with the terms of his probation, he was allowed to continue on probation. Nevertheless, Willis was subsequently charged with three felonies involving violence, and the evidence sustained that such charges were reasonable and based upon probable cause.

Based upon the evidence presented, we find that the order that he serve the previously suspended sentence was not inappropriate in light of the offense and the offender.

Affirmed.

BAKER, J., and ROBB, J., concur.