



Timothy Robertson appeals from the trial court's order revoking his probation and ordering that he serve two years of his previously suspended sentence. Robertson presents one issue for our review: Is the evidence sufficient to sustain the trial court's revocation of his probation?

We affirm.

On August 18, 2004, Robertson was charged with unlawful possession of a firearm by a serious violent felon, a class B felony, and was alleged to be an habitual offender. Robertson was further charged with additional offenses under two other cause numbers. On December 9, 2004, Robertson entered into a plea agreement that resolved all three pending criminal cases. Specifically, Robertson pleaded guilty to robbery as a class C felony under Cause No. 27D01-0402-FC-21 (FC-21), and possession of a firearm by a serious violent felon as a class B felony under the current cause, 27D01-0408-FB-116 (FB-116). In exchange, the State agreed to dismiss both counts under Cause No. 27D01-0309-FB-125 as well as the habitual offender allegations in the other two causes (i.e., FC-21 and FB-116). The plea agreement provided that Robertson would be sentenced to an eight-year sentence for the robbery in Cause No. FC-21 and a ten-year sentence, with two years suspended to probation, for the possession conviction under Cause No. FB-116. The sentences were to be served concurrently. Robertson was sentenced in accordance with the terms of the plea agreement and served the executed portion of his sentences. Robertson was placed on probation beginning November 22, 2007 and ending on November 22, 2009.

On May 16, 2008, the State filed a petition to revoke Robertson's probation alleging that Robertson had failed to attend scheduled probation meetings and that he no longer lived

at the address on file. Robertson appeared on August 11, 2009, for an initial hearing on the petition for revocation. On September 23, 2009, the State filed an addendum to its petition for revocation of probation, alleging that Robertson had violated his probation by committing the offenses of armed robbery and battery. The court held an evidentiary hearing on July 28, 2010, at which the State submitted into evidence the charging information for the new offenses (Cause No. 27D01-0803-FB-22) and the Order on Jury Trial showing that Robertson was convicted of armed robbery and battery. At the State's request, the trial court took judicial notice of all prior proceedings in the instant cause. The State also presented one witness, a probation officer, who testified that Robertson had been convicted of a crime while on probation. Based upon the State's evidence, the trial court revoked Robertson's probation upon finding that he committed a new criminal offense while on probation. The trial court ordered Robertson to serve the balance of his previously suspended sentence. Robertson now appeals.

Probation is a matter of grace and a conditional liberty that is a favor, not a right. *Cooper v. State*, 917 N.E.2d 667 (Ind. 2009). The trial court determines the conditions of probation and may revoke upon determining that those conditions were violated. *Id.* The decision to revoke probation is committed to the trial court's sound discretion. *Id.* We review its decision on appeal for abuse of that discretion. *Id.* When conducting our review, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge the credibility of the witnesses. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008). If there is substantial evidence of probative value supporting the determination that a defendant has violated any terms of probation, we will affirm the decision to revoke. *Id.*

Robertson first “takes exception” to the well-established notion that the decision to grant probation is a matter within the sound discretion of the trial court. *Appellant’s Brief* at 14. Robertson also takes exception to the notion that probation is a matter of grace and a conditional liberty that is a favor, not a right. In this vein, Robertson asserts that probation was something he bargained for and not a matter of grace extended by the trial court. Robertson argues that once the trial court accepted the plea agreement, the court was bound by its terms. Robertson seems to be arguing that the trial court could not revoke, modify, or extend his probation because the court was bound by the terms of the plea agreement. Robertson fails to present any citation to authority to support his proposition. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that each contention be supported by citation to authorities relied upon). In any event, Robertson’s argument in this regard is wholly without merit as it is an incorrect statement of law.

Trial courts have discretionary power to accept or reject a plea agreement. *Badger v. State*, 637 N.E.2d 800 (Ind. 1994). By deciding to accept a plea agreement and the sentence set forth therein, the trial court is manifesting its assent to the terms thereof, including extending grace to the defendant by allowing for a portion of the sentence to be served on probation. Further, while a trial court is absolutely bound by the terms of a plea agreement once it is accepted, *see id.*, by accepting the plea agreement, the trial court does not divest itself of its authority revoke probation upon a finding of a violation. *Cox v. State*, 850 N.E.2d 485 (Ind. Ct. App. 2006).

Robertson also argues that the trial court abused its discretion in revoking his probation because the State’s evidence was insufficient to support a finding that he violated

the conditions of his probation. Robertson points out that the State did not present any evidence that set forth the conditions of his probation that the State claimed he violated, specifically, the condition that he not commit another crime while on probation.

Here, the trial court took judicial notice of its entire case file for the instant cause. In the file is an Order Imposing Conditions of Probation that was signed by Robertson. Certain special terms of probation are set forth in the document and at the bottom of the page, Robertson indicated that he had “read and/or had explained to [him] the conditions of [his] probation (General and Special Terms).” *Appellant’s Appendix* at 49. The State did not offer into evidence a document setting forth the general terms of Robertson’s probation.

Although it would have been preferable for the State to have entered the specific terms of Robertson’s probation into evidence, the omission has no practical effect in this case. The law of this state is well-established that although a trial court must specify the conditions of probation in the record, *see* Ind. Code § 35-38-2-1(a)(1) (West, Westlaw through 2010 2nd Regular Sess.), it is always a condition of probation that a probationer not commit an additional crime. *Braxton v. State*, 651 N.E.2d 268 (Ind. 1995). So fundamental is this condition to the nature of probation that this court has found that it is not “necessary” for the trial court to advise a defendant not to commit an additional crime while on probation. *Atkins v. State*, 546 N.E.2d 863, 865 (Ind. Ct. App. 1989). Although the better practice is to advise a defendant of such condition, we note that refraining from committing a crime is “automatically a condition of probation by operation of law without a specific provision to that effect.” *Jaynes v. State*, 437 N.E.2d 137, 139 (Ind. Ct. App. 1982). It is therefore

unnecessary to prove that such was a condition of Robertson's probation.<sup>1</sup> The trial court did not abuse its discretion when it revoked Robertson's probation upon finding that he committed an additional crime while on probation.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.

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<sup>1</sup>Robertson does not argue that he was not aware of this condition of his probation.