

Case Summary

Billy Dee Williams (“Williams”) appeals the revocation of his probation. We affirm.

Issue

Williams raises one issue, which we restate as whether the trial court abused its discretion in revoking his probation.

Facts and Procedural History

Charged with five offenses, Williams agreed to plead guilty to one count of Forgery, a Class C felony.¹ The plea agreement provided that the sentence was “OPEN – ALL TIME TO BE DONE ON HOME DETENTION, unless he violates the rules of Home Detention.” Appendix at 31.

The trial court accepted the plea, entered judgment of conviction, and sentenced Williams as follows:

the Defendant is committed to the custody of the Department of Correction for a period of Four (4) years, with Two (2) Years executed and Two (2) Years suspended, and Two (2) Years’ [sic] supervised probation to follow the executed portion of the sentence.

Defendant shall serve the executed portion of the sentence on electronic home detention through Delaware County Community Corrections, and he shall follow all rules and pay all associated costs.

...

After the Defendant completes the executed portion of the sentence, the Defendant shall be placed on supervised probation under the following conditions:

¹ Ind. Code § 35-43-5-2(b)(4).

1. Defendant shall be placed on supervised probation for a period of Two (2) Years. Defendant shall pay [fees].
2. Defendant shall behave well and not further violate the law.
3. Defendant shall sign and abide by all rules of supervised probation.

Id. at 50. Williams did not appeal the order.

Williams was released from home detention on December 17, 2007. On July 4, 2008, Muncie Police Department Officer Nathan Sloan (“Officer Sloan”) executed a probable cause affidavit asserting the following: “Williams admitted to manufacturing US paper currency which he later passed to individuals who distributed it around the community. Williams also admitted to being in possession of . . . stolen property.” State’s Exhibit 2. Williams was soon charged with Receiving Stolen Property and two counts of Forgery (“Cause 0022”). The State then petitioned for revocation of his probation in the instant cause.

The trial court found that Williams had violated the terms of his probation. It therefore revoked his probation and ordered him committed to the Department of Correction (“DOC”) for the remainder of his term.

Williams now appeals the revocation of his probation.

Discussion and Decision

Williams argues that the trial court abused its discretion in revoking his probation because: (1) the charges in Cause 0022 “had not been adjudicated”; (2) the plea agreement did not provide for his serving in the Department of Correction; and (3) “alternative sanctions were more appropriate.” Appellant’s Brief at 12, 13.

The review and revise remedy of Indiana Appellate Rule 7(B) is not available “when reviewing a trial court’s actions in a post-sentence probation violation proceeding.” Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008). Therefore, Williams’ third argument is unavailing.

We review a trial court’s revocation of probation for an abuse of discretion. Woods v. State, 892 N.E.2d 637, 639 (Ind. 2008). In doing so, we consider only the evidence most favorable to the judgment without reweighing that 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 a term of probation, we will affirm its decision to revoke probation. Id. at 639-40.

First, Williams argues that revoking his probation was improper because the Forgery and Receiving Stolen Property charges had not been adjudicated. However, where “the alleged probation violation is the commission of a new crime, the State does not need to show that the probationer was convicted of a new crime. The trial court only needs to find that there was probable cause to believe that the defendant violated a criminal law.” Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (citation omitted). Here, Officer Sloan testified that he found in Williams’ home “eight pages of white paper with counterfeit United States currency in the form of hundred-dollar bills on them with a specific serial number.” Transcript at 18. According to Officer Sloan, Williams admitted to him that “he had counterfeited approximately seventy one-hundred-dollar bills and distributed them to his friends.” Id. at 19. Based upon this record, there was substantial evidence of probative value

that Williams violated the terms of his probation.

Finally, as to Williams' argument that his serving his sentence in the Department of Correction did not comply with the terms of the plea agreement, we note that he did not appeal the trial court's sentencing order. Accordingly, he is foreclosed from arguing that the sentencing order did not comply with the terms of the plea agreement. Ind. Appellate Rule 9(A).

Under the trial court's sentencing order, Williams was "committed to the custody of the Department of Correction" for four years, with two years executed to be served on electronic home detention and two years suspended. App. at 50. Two years of supervised probation was to follow the executed portion of the sentence. Effectively, Williams reads the sentencing order to provide that he could not be ordered to execute time through any means other than electronic home detention. We conclude otherwise. The trial court began its description of Williams' sentence by committing him to the custody of the Department of Correction for four years. Furthermore, the electronic-home-detention provision related only to "the executed portion of the sentence" – not the subsequent two years during which he would be on supervised probation. Id. There is no dispute that Williams completed the executed portion of his sentence on December 17, 2007 and that he was on supervised probation when he was arrested and charged in Cause 0022.

For these reasons, we conclude that the trial court did not abuse its discretion in revoking Williams' probation.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.