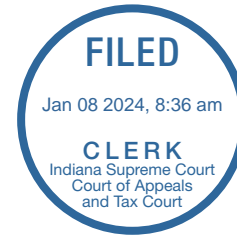


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Eugene A. Kress
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Emanuel Jamel England,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 8, 2024

Court of Appeals Case No.
23A-CR-1558

Appeal from the
Hamilton Circuit Court

The Honorable
Paul A. Felix, Judge

Trial Court Cause No.
29C01-1402-FB-1309

Memorandum Decision by Senior Judge Baker
Judges Bailey and Pyle concur.

Baker, Senior Judge.

Statement of the Case

- [1] Emanuel England was placed on probation after committing Class B felony robbery, and he later admitted to violating the conditions of his probation. He appeals the sanction the trial court imposed for his violations, arguing the court erred by rejecting lesser sanctions. Among other violations, England committed three new felonies while on probation. Concluding the trial court did not err in selecting the most severe sanction for England's probation violations, we affirm.

Facts and Procedural History

- [2] In 2014, England pleaded guilty to Class B felony robbery. Pursuant to the plea agreement, England was sentenced to fifteen years with six years executed and three years in a community corrections program. The remaining six years were suspended, but for three of those years, England would be on probation.
- [3] England agreed to comply with the conditions of his community corrections program, as well as with general conditions of probation. He specifically agreed to refrain from committing new criminal offenses, including the consumption of controlled substances.
- [4] England served the DOC portion of his sentence and entered community corrections. In 2017, the State filed a notice of probation violation, alleging England had committed a new criminal offense, namely driving without a valid

license. The trial court determined England had violated the conditions of his placement and ended England's commitment to community corrections. The court ordered England to serve the three-year term of his placement in the DOC, plus one year of his previously-suspended sentence. England served the four-year executed term and was released to probation.

[5] In 2019, the State filed a second notice of probation violation, alleging England had been charged in a Lake County case with fourteen new offenses, including multiple counts of Level 6 felony fraud. The State further alleged England had twice tested positive for marijuana. England later pleaded guilty in Lake County to one count of fraud.

[6] The trial court held an evidentiary hearing and determined England had violated the conditions of his probation. But before the court could hold a dispositional hearing, the State filed a third notice of probation violation. The State claimed England had been charged with six new offenses, all felonies, in a second case from Lake County. The State also alleged, among other claims, that England had twice tested positive for marijuana. England later pleaded guilty to one count of Level 5 felony robbery in the second Lake County case. Next, the State learned England had been convicted of Class C felony attempted robbery in Tennessee.

[7] A delay ensued, during which England was incarcerated in relation to the Tennessee case and one of the Lake County cases. In July 2023, the trial court held an evidentiary hearing, and England admitted to the following violations:

committing Level 5 felony robbery and consuming marijuana. As a sanction, the court ordered England to serve the remaining five years of his previously-suspended sentence in the DOC. Among other considerations, the court noted: “I am baffled by the suggestion that I would revoke anything less than the maximum amount of time in this case. I don’t know what gets to a full revocation if three new felonies aren’t sufficient to do that.”¹ Tr. Vol. 2, p. 25. This appeal followed.

Discussion and Decision

[8] If a trial court determines that a person has violated a condition of probation within the probationary period, the court may impose one or more of these 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.

Ind. Code § 35-38-2-3(h) (2015).

¹ The record does not directly identify the level of fraud to which England pleaded guilty in the first Lake County case, but the trial court’s statement implies the fraud conviction was for a felony-level offense. England is not challenging the trial court’s assertion that he accrued three new felony convictions while on probation.

[9] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). When a trial court imposes a sanction for a probation violation, we review the court’s decision for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. “A trial court abuses its discretion by ruling in a way clearly against the logic and effect of the facts and circumstances before it, or by misinterpreting the law.” *Hickman v. State*, 81 N.E.3d 1083, 1085 (Ind. Ct. App. 2017).

[10] England argues the trial court should have considered a shorter sentence and alternatives to an executed sentence in the DOC because his misconduct arose from untreated substance abuse issues. But he did not mention any substance abuse issues during his testimony at the hearing. Instead, England largely blamed his misconduct on a “criminal mindset or immature thinking.” Tr. Vol. 2, p. 15. He also stated he hoped to get “therapy or counseling” if the court imposed a sanction of work release. *Id.* And England’s counsel argued to the court that England had made “bad decisions” but was attempting “to move forward.” *Id.* at 21.

[11] Further, during England’s incarceration for other cases, he completed anger management classes and several other courses, but not substance abuse-related programming. And even after the probation department recommended he attend mental health and substance abuse counseling, England “said he did not feel he was currently in need for [sic] treatment.” *Id.* at 20. In sum, the

evidence of England's substance abuse issues, and any attempts by him to address those issues while he was on probation, is minimal at best.

[12] By contrast, England does not deny he committed three felonies while on probation, including robbery and attempted robbery. It is troubling that he continues to commit the same type of violent offenses for which he was originally placed on probation. In addition, throughout England's time on probation, it appears he stopped committing new criminal offenses only while he was incarcerated. And England admitted to consuming marijuana. We cannot conclude the trial court's sanction decision was against the logic and effect of the facts and circumstances presented. *See Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018) (no abuse of discretion in imposing entirety of suspended sentence as sanction for probation violations; Porter committed a new criminal offense and failed to participate in substance abuse treatment).

Conclusion

[13] For the reasons stated above, we affirm the trial court.

[14] Affirmed.

Bailey, J., and Pyle, J., concur.