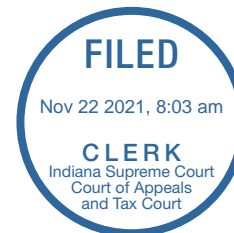


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Delilah Kaiser,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 22, 2021
Court of Appeals Case No.
21A-CR-1483
Appeal from the
Clark Circuit Court
The Honorable
Bradley B. Jacobs, Judge
Trial Court Cause No.
10C02-1905-F6-751

Molter, Judge.

- [1] Delilah Kaiser appeals the trial court's order revoking her probation and ordering her to serve her sentence in the community corrections' mental health

and drug treatment program. She argues this order was an abuse of the trial court's discretion because, even though she admitted to violating the terms of her probation by using illegal drugs and declining drug treatment, she had subsequently enrolled in a substance abuse program. But probation revocation and drug treatment were sanctions the trial court was permitted to choose for Kaiser's repeated probation violations, so we affirm.

Facts and Procedural History

- [2] In 2019, Kaiser pleaded guilty to two counts of possession of a controlled substance (Class A Misdemeanors) and one count of misdemeanor possession of marijuana (Class B Misdemeanor). Appellant's App. Vol. 2 at 18–19, 27–29. The trial court sentenced her to 360 days of incarceration with the Indiana Department of Corrections, but suspended the sentence and allowed her to serve the time on probation subject to “strict terms.” *Id.* Those terms included not committing another criminal offense, not using controlled substances without a prescription, and undergoing any drug counseling recommended by a probation officer or treatment provider. *Id.*
- [3] Kaiser then repeatedly violated her probation by using illegal drugs and declining treatment. *Id.* at 34. She was hospitalized and given Narcan twice because she had overdosed on an illegal substance in early September 2020. *Id.* Days later, she began receiving—and eventually completed—in-patient treatment. *Id.* Kaiser was then given a referral for aftercare, but she did not follow through.

- [4] Later, in October 2020, Kaiser took oxycodone, had a seizure, and fell. *Id.* She was taken to the hospital for this incident. *Id.* A couple of weeks later, Kaiser tested positive for methamphetamine after submitting a drug screen as part of her probation. *Id.*
- [5] During an appointment with her probation officer at the end of October, Kaiser reported that she was not in a treatment program. *Id.* Her probation officer told her that she needed to enroll in a substance abuse program as soon as possible. *Id.* at 35. Kaiser was then unsuccessfully discharged from the alcohol and drug program, and her probation officer recommended that she return to the sentencing court. *Id.*
- [6] The State filed a petition to revoke Kaiser’s probation, alleging that she failed to comply with substance abuse treatment by not participating in aftercare and testing positive for methamphetamine. *Id.* at 31. Kaiser admitted to the violations, and a sanctions hearing was set. *Id.* at 95. At the hearing, Kaiser presented evidence that she had been in substance abuse treatment for four months, was taking medication to treat her drug addiction, and was attending counseling. Tr. at 6–10; Appellant’s App. Vol. 2 at 51, 53. After hearing the evidence, the trial court revoked Kaiser’s entire year of probation and ordered her to serve one year with community corrections in the MAST Program (Mental Health Addiction Supervision and Treatment Program). Appellant’s App. Vol. 2 at 57; Tr. at 13. Kaiser now appeals.

Discussion and Decision

- [7] ““Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.”” *Cain v. State*, 30 N.E.3d 728, 731 (Ind. Ct. App. 2015) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. “Courts in probation revocation hearings ‘may consider any relevant evidence bearing some substantial indicia of reliability.’” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999)). “It is within the discretion of the trial court to determine the conditions of a defendant’s probation and to revoke probation if the conditions are violated.” *Id.*
- [8] “[A]ll probation requires ‘strict compliance’” because “once the trial court extends this grace and sets its terms and conditions, the probationer is expected to comply with them strictly.” *Id.* at 731–32 (quoting *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008)). “If the probationer fails to do so, then a violation has occurred.” *Id.* If a violation is proven, the trial court must determine if the violation warrants revocation of the probation. *Sullivan v. State*, 56 N.E.3d 1157, 1160 (Ind. Ct. App. 2016). ““However, even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation.”” *Id.* (quoting *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012)).
- [9] If the trial court determines a probationer has violated a term of probation, it may impose one or more of the following 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 year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. I.C. § 35-38-2-3(h). We review a trial court's sentencing decisions for probation violations under an abuse of discretion standard. *Knecht v. State*, 85 N.E.3d 829, 840 (Ind. Ct. App. 2017). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[10] Kaiser argues the trial court abused its discretion when it ordered her to serve the entirety of her previously suspended one-year sentence in the community corrections' MAST program. She contends that was improper because she was actively seeking treatment for her drug addiction and had been in a substance abuse program for four months at the time of the sanctions hearing. Kaiser maintains the evidence shows that she was complying with substance abuse treatment. She also asserts that the trial court's order uproots her from her current substance abuse program, disrupting her recovery. These arguments do not reflect an abuse of discretion.

[11] Kaiser had numerous opportunities to remain on probation as an alternative to serving her sentence in prison, but she violated her probation multiple times. While on probation, she continued to use illegal drugs and was hospitalized for a drug overdose months after starting probation. She completed in-patient drug treatment and was given a referral for aftercare. But then she did not pursue aftercare and was hospitalized within days because she took oxycodone, had a

seizure, and fell. Even after this incident, Kaiser tested positive for methamphetamine during a random drug screen.

[12] Kaiser admitted to these allegations, and the trial court revoked her probation and imposed the previously suspended one-year sentence. But even then, the trial court extended Kaiser more grace by ordering that her one year be served with community corrections on the MAST program.

[13] The violation of even a single condition of probation is sufficient to revoke probation. *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*. Here, Kaiser committed multiple violations of her probation. Given Kaiser's multiple probation violations and unwillingness to comply with the conditions of her probation, the trial court was within its discretion to determine that Kaiser was not a good candidate to continue probation and to revoke her previously suspended sentence. We, therefore, conclude that the trial court did not abuse its discretion when it ordered Kaiser to serve the entirety of her previously suspended sentence.

[14] Affirmed.

Vaidik, J., and May, J., concur.