

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Clift,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 27, 2023

Court of Appeals Case No.
22A-CR-2095

Appeal from the
Dearborn Circuit Court

The Honorable
James D. Humphrey, Judge

Trial Court Cause No.
15C01-1703-F5-30

Vaidik, Judge.

Case Summary

- [1] Christopher R. Clift contends the trial court erred in denying his motion to dismiss the State's petition to revoke his probation. We affirm.

Facts and Procedural History

- [2] In 2017, the State charged Clift with Level 5 felony conspiracy to commit trafficking with an inmate, Level 6 felony conspiracy to deal in a schedule III controlled substance, and being a habitual offender. In 2018, Clift and the State entered into a plea agreement under which Clift would plead guilty to the Level 5 felony and being a habitual offender and the State would dismiss the Level 6 felony. The State further agreed that Clift's sentence would be twelve years, with five years suspended, and that he would "be placed on Probation for a period of 5 years beginning upon date of release from incarceration." Appellant's App. Vol. III p. 156. The trial court accepted the plea agreement and sentenced Clift to twelve years, with five years suspended, and placed him "on reporting probation for a period of five (5) years to begin upon date of release from incarceration." *Id.* at 167.
- [3] In 2020, while serving his sentence, Clift again committed Level 5 felony conspiracy to commit trafficking with an inmate. He was convicted in February 2021. *See* Cause No. 67C01-2006-F5-516. In June 2021, the State petitioned to revoke Clift's probation in the 2017 case based on the commission of this new offense. Clift moved to dismiss the petition, arguing he couldn't have violated

his probation yet because, according to the plea agreement, it wouldn't start until he was released from incarceration. The trial court denied Clift's motion to dismiss, found that he violated his probation, and ordered him to serve his five-year suspended sentence.

[4] Clift now appeals.

Discussion and Decision

[5] Clift challenges the trial court's denial of his motion to dismiss the State's petition to revoke his probation. Clift contends that, according to the language of his plea agreement, his probation wouldn't start until he was released from incarceration in the 2017 case and therefore the new offense couldn't have been a probation violation. The interpretation of Clift's plea agreement presents an issue of law, which we review de novo. *Bowling v. State*, 960 N.E.2d 837, 841 (Ind. Ct. App. 2012), *trans. denied*.

[6] Indiana Code section 35-38-2-3(a)(1) provides that a trial court "may revoke a person's probation if . . . the person has violated a condition of probation during the probationary period" It is well settled that a defendant's "probationary period" begins "immediately after sentencing." *Baker v. State*, 894 N.E.2d 594, 597-98 (Ind. Ct. App. 2008); *see also Rosa v. State*, 832 N.E.2d 1119 (Ind. Ct. App. 2005); *Crump v. State*, 740 N.E.2d 564 (Ind. Ct. App. 2000), *trans. denied*; *Ashley v. State*, 717 N.E.2d 927 (Ind. Ct. App. 1999), *reh'g denied*. This means that "a defendant can have his probation revoked prospectively and his

suspended time imposed even before he begins the probation phase of his sentence.” *Waters v. State*, 65 N.E.3d 613, 617 (Ind. Ct. App. 2016); *see also Hart v. State*, 889 N.E.2d 1266, 1270 (Ind. Ct. App. 2008) (“Although a defendant’s ‘probationary period’ begins immediately after sentencing, in general, the actual monitoring of a defendant by the probation department, or what is more commonly referred to as the ‘actual probation,’ in fact ‘begins at a later date.’” (quotation omitted)).

[7] Clift claims that the language of his plea agreement, which provides that he would “be placed on Probation for a period of 5 years beginning upon date of release from incarceration,” “limit[s]” the “probationary period” to begin upon his “release from incarceration.” Appellant’s Br. p. 11. It does not. Clift’s plea agreement merely recognizes that his actual probation started when he was released from incarceration. It does not change the fact that his “probationary period” started immediately after sentencing and that his probation could be revoked prospectively before his actual probation started. The plea agreement’s language is entirely consistent with the above law. Because Clift committed the 2020 offense during the “probationary period” for his 2017 offense, the trial court properly denied his motion to dismiss the State’s petition to revoke his probation.

[8] Affirmed.

Tavitas, J., and Foley, J., concur.