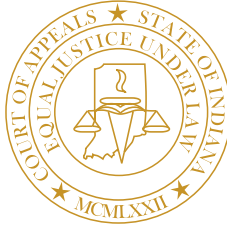


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Steven M. Smith,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



June 28, 2024

Court of Appeals Case No.
24A-CR-613

Appeal from the Decatur Superior Court
The Honorable Matthew D. Bailey, Judge
Trial Court Cause No.
16D01-1901-F1-000040

Memorandum Decision by Judge Felix
Judges Riley and Kenworthy concur.

Felix, Judge.

Statement of the Case

[1] Steven Smith violated his probation by consuming methamphetamine and amphetamine on three separate occasions. Consequently, the trial court fully executed Smith's five-year suspended sentence he received due to being convicted of battery causing serious bodily injury. Smith now appeals and raises one issue for our review: Whether the trial court abused its discretion when it sentenced Smith on the probation violation.

[2] We affirm.

Facts and Procedural History

[3] On June 6, 2023, Smith pled guilty to one count of battery causing serious bodily injury as a Level 5 felony. The trial court accepted Smith's guilty plea and sentenced him to six years, with one year executed at the Indiana Department of Correction ("DOC") and the other five years suspended to probation.

[4] Because Smith had been incarcerated prior to pleading guilty, he began his probation the day he pled guilty. One of the terms of Smith's probation was that he was not to possess or use drugs, and he was to submit to drug and alcohol screens. On June 27, October 18, and November 2, 2023, Smith tested positive for methamphetamine and amphetamine. When Smith provided the urine samples that tested positive, he denied recently using illegal substances.

On November 14, 2023, Smith’s probation officer filed a petition to revoke Smith’s probation.

- [5] On January 11, 2024, the trial court held an evidentiary hearing on the probation revocation petition; Smith admitted that he failed the three drug screens. At the dispositional hearing, Smith requested the trial court sentence him to time served so he could address a medical issue and “move on with [his] life.” Tr. Vol. II at 18. At the State’s request, the trial court took judicial notice of Smith’s pre-sentence investigation report. According to that report, Smith has five misdemeanor convictions, seven felony convictions, and three prior probation revocations. The trial court ordered Smith to serve the previously suspended five years of his sentence in the DOC with the possibility of a sentence modification if he completes the Recovery While Incarcerated program, which he can begin after May 14, 2025. This appeal ensued.

Discussion and Decision

The Trial Court Did Not Abuse Its Discretion by Sentencing Smith to Five Years at the DOC for His Probation Violation

- [6] Smith argues that the trial court abused its discretion by ordering him to serve the remaining five years of his sentence at the DOC after he violated the terms of his probation. “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). We review a trial court’s sentencing decision on a probation violation for an abuse of discretion. *Prewitt*, 878 N.E.2d at 188 (citing *Sanders v. State*,

825 N.E.2d 952, 956 (Ind. Ct. App 2005)). “An abuse of discretion occurs ‘where the decision is clearly against the logic and effect of the facts and circumstances.’” *Smith*, 963 N.E.2d at 1112 (quoting *Prewitt*, 878 N.E.2d at 188). “We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses.” *Id.* (citing *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999)).

[7] Miller contends that the trial court abused its discretion by not giving more weight to (1) this being his first probation violation in this case, (2) this violation not being a “severe violation,” Appellant’s Br. at 7, (3) Smith’s medical issues, and (4) Smith’s request for substance abuse treatment. In contradiction to Smith’s suggestion that this is his first violation of probation, it is actually his third. Smith is attempting to benefit from the probation department’s attempt to alleviate the need to bring a probationer to court for every instance of a violation. Just because this was the first time coming back to court does not mean that it was his first violation. Smith’s other contentions are merely requests for this court to review the evidence and reassess witness credibility, which we cannot do. *See Smith*, 963 N.E.2d at 1112 (citing *Cox*, 706 N.E.2d at 551). Therefore, the trial court did not abuse its discretion when it sentenced Smith to the remaining five years of his sentence for his probation violation. We thus affirm the trial court’s decision.

[8] Affirmed.

Riley, J., and Kenworthy, J., concur.

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