

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Donta D. Creighton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 7, 2023

Court of Appeals Case No.
22A-CR-3003

Appeal from the Ohio Circuit
Court

The Honorable Kimberly A.
Schmaltz, Magistrate

Trial Court Cause No.
58C01-2008-F6-56

Memorandum Decision by Judge Tavitias
Judges Vaidik and Foley concur.

Tavitias, Judge.

Case Summary

- [1] Donta Creighton appeals the trial court’s order imposing 545 days of his previously suspended sentence as a sanction for his probation violation. Creighton argues that the trial court abused its discretion by imposing this sanction. We find Creighton’s argument without merit and, accordingly, affirm.

Issue

- [2] Creighton raises one issue on appeal, which we restate as whether the trial court abused its discretion by imposing 545 days of Creighton’s previously suspended sentence as a sanction for his probation violation.

Facts

- [3] On August 20, 2021, Creighton, a resident of Ohio, was convicted of strangulation, a Level 6 felony, and was sentenced to 730 days in jail with 624 days suspended to probation. On September 30, 2021, the supervision of Creighton’s probation was transferred to Ohio.
- [4] On June 28, 2022, the State filed a probation violation petition, which alleged that Creighton “has failed to report to the supervising authorities in Ohio” Appellant’s App. Vol. II p. 93. The petition further alleged that, on June 3, 7, and 10, 2022, the supervising authorities in Ohio attempted unsuccessfully to contact Creighton in person at his father’s house in Ohio, which was Creighton’s last known address on file, and that, on June 10, 2022, the

authorities left business cards in the door of the house and in the mailbox. Creighton, however, did not timely report to his probation officer.

[5] The trial court held a fact-finding hearing on the petition on November 4, 2022. Creighton testified that he was unaware that he was assigned to a new probation officer when his probation was transferred to Ohio and that his efforts to contact his previous probation officer were unsuccessful. He further testified that he was at work when the Ohio authorities came to his father's house. Creighton explained that he had "never been on . . . probation like this before" but admitted that he "should've been doing more" to contact his probation officer. Tr. Vol. II p. 8. The trial court found that Creighton violated the conditions of his probation and set the matter for a dispositional hearing.

[6] The trial court held the dispositional hearing on November 18, 2022. Regarding the business cards that the Ohio authorities left at Creighton's father's house, Creighton testified that a tornado came through the area and that he contacted the person named on the business card after he "finally found one [business card]." *Id.* at 19. Creighton admitted that "the burden" was on him to contact his Ohio probation officer and that "the only way probation works is that you . . . report." *Id.* at 16, 20.

[7] In determining the sanction for Creighton's probation violation, the trial court stated, "I am considering the seriousness of the underlying charge [(strangulation, a Level 6 felony)]. I am also considering [that] this violation is based on a technical violation, failure to report, which makes [Creighton]

ineligible to be able to go to the Indiana Department of Corrections [sic].” *Id.* at 21. The trial court imposed 545 days of Creighton’s previously suspended sentence as a sanction for his probation violation, terminated Creighton’s probation, and ordered that Creighton serve the remainder of his sentence in the Dearborn County Jail. Creighton now appeals.

Discussion and Decision

- [8] Creighton does not challenge the trial court’s finding that he violated the conditions of his probation; rather, he only challenges the trial court’s order imposing 545 days of his previously suspended sentence as a sanction for his probation violation.
- [9] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Killebrew v. State*, 165 N.E.3d 578, 581 (Ind. Ct. App. 2021) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. If the trial court finds a probation violation, it “must determine the appropriate sanction.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). The trial court “may impose any 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 (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).

- [10] “While it is correct that probation may be revoked on evidence of violation of a single condition, the selection of an appropriate sanction will depend upon the severity of the defendant’s probation violation, which will require a determination of whether the defendant committed a new criminal offense.” *Heaton*, 984 N.E.2d at 618. “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Id.* at 616 (citing *Prewitt*, 878 N.E.2d at 188). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances,” *id.* (citing *Prewitt*, 878 N.E.2d at 188), “or when the trial court misinterprets the law,” *id.* (citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)).
- [11] Creighton argues that he “was unfamiliar with the probation process and continued to try to report to his prior probation officer”; he was working when the Ohio authorities attempted to contact him at his father’s house; he did not commit any new offenses; he was “living in a safe and stable residence”; and he “had consistent legal income.” Appellant’s Br. p. 9. He contends that, “[i]n light of the only violation being a status offense and Creighton’s stable employment and home, the trial court abused its discretion by revoking five hundred and forty-five (545) [days] of Creighton’s probation.” *Id.*
- [12] Creighton violated the conditions of his probation by failing to report to his probation officer. The probation department, thus, was unable to monitor

Creighton and ensure he was adequately following the remaining conditions of his probation. Further, at the fact-finding and dispositional hearings, Creighton acknowledged that the burden was on him to report to his probation officer, that reporting to his probation officer was “the only way probation works,” and that he should have done more to follow through on his reporting requirements. Tr. Vol. II p. 20.

[13] The trial court was only required to find one violation to revoke Creighton’s probation, and that circumstance is present here. Moreover, the trial court explained that, in revoking Creighton’s probation, it considered not only Creighton’s violation but also the seriousness of his underlying offense, which Creighton does not challenge as improper. Though Creighton argues that he has stable employment and living conditions, the trial court was in the best position to determine whether those circumstances warranted a less severe sanction. *See Prewitt*, 878 N.E.2d at 188 (holding that trial courts possess “considerable leeway” in determining the proper sanction for a probation violation and observing that “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants”). Accordingly, we cannot say that the trial court abused its discretion by imposing Creighton’s previously suspended sentence.

Conclusion

[14] The trial court did not abuse its discretion by imposing 545 days of Creighton’s previously suspended sentence. Accordingly, we affirm.

[15] Affirmed.

Vaidik, J., and Foley, J., concur.