

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

Jennifer A. Joas  
Madison, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Indiana Attorney General  
  
Alexandria Sons  
Deputy Attorney General  
Indianapolis, Indiana

---

# IN THE COURT OF APPEALS OF INDIANA

---

Chadwick Delany Gunter,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 30, 2023

Court of Appeals Case No.  
23A-CR-88

Appeal from the Jefferson Circuit  
Court

The Honorable Donald J. Mote,  
Judge

Trial Court Cause No.  
39C01-1903-F4-257

**Memorandum Decision by Chief Judge Altice**  
Judges May and Foley concur.

**Altice, Chief Judge**

## **Case Summary**

- [1] Chadwick Gunter appeals the revocation of his probation, arguing that the trial court abused its discretion in ordering him to complete the remainder of his sentence in the Indiana Department of Correction (DOC).
- [2] We affirm.

## **Facts and Procedural History**

- [3] On March 6, 2019, the State charged Gunter with Level 4 felony dealing in methamphetamine, Level 6 felony maintaining a common nuisance, Class B misdemeanor possession of marijuana, and Class A misdemeanor unlawful possession of a firearm by a domestic batterer. Thereafter, on November 13, 2019, Gunter pleaded guilty to Level 4 felony dealing in methamphetamine and Class A misdemeanor unlawful possession of a firearm by a domestic batterer. On December 11, 2019, Gunter was sentenced to six years executed in the DOC, with the ability to petition to modify his sentence pending completion of the Recovery While Incarcerated (RWI) program and no conduct violations.
- [4] On March 8, 2021, Gunter successfully completed the RWI program and filed a petition to modify his sentence that was subsequently granted. On March 31, 2021, the trial court ordered Gunter to serve the remaining 1284 days of his sentence on probation.

- [5] From April 2021 through November 2021, Gunter displayed good behavior while on probation, producing four negative drug screens during this time. Gunter, however, tested positive for methamphetamine twice in January 2022. He also failed to report for a drug screen on March 28, 2022, and again tested positive for methamphetamine on April 7, 2022. Thereafter, Gunter entered and completed the Sunrise Treatment Center program from April 18 through May 15, and he subsequently tested negative for a drug screen in June 2022.
- [6] Over the next five months, Gunter failed to report to probation several times. He was also discharged from More Recognition Therapy (MRT), a requirement of his probation, on September 27, 2022, because of excessive unexcused absences. As a result, the State filed a petition to revoke Gunter's probation on November 2, 2022. Gunter blamed his lack of communication and failure to report to probation on several different health issues including a potential embolism and at least two bouts of COVID-19.
- [7] On December 14, 2022, the trial court found that Gunter had violated the terms of his probation by testing positive for methamphetamine three times, failing to report for drug screens four times, being discharged from MRT, and failing to report to probation a number of times. The trial court revoked Gunter's probation and ordered him to serve the remainder of the sentence in the DOC. Gunter now appeals.

## Discussion and Decision

- [8] Gunter contends that the trial court abused its discretion when it revoked his probation and ordered him to serve the remainder of his sentence in the DOC. Specifically, Gunter argues that because he did not commit any new offenses and because he suffered from physical ailments that made it difficult for him to report to probation, the trial court should not have revoked his entire sentence.
- [9] Probation is a “matter of grace left to the trial court’s discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs only when the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*.
- [10] Indiana Code § 35-28-2-3(h) provides:
- When a violation of probation is found the court may: (1) continue the person on probation with or without modifying or enlarging 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 the initial sentencing.
- To revoke probation the trial court must (1) make a factual determination that a violation has occurred and then (2) decide if revocation is appropriate. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*.
- [11] Here, it is undisputed that Gunter violated the terms of his probation by failing to report to probation, failing to submit to drug screens, testing positive for methamphetamine, and being discharged from MRT. Thus, the only question is

whether it was an abuse of the trial court's discretion to order Gunter to serve the remainder of his sentence in the DOC.

[12] Gunter argues that although he failed some drug screens, he remained drug-free after his treatment at Sunrise in May 2022. Additionally, the reason he failed to appear for certain drug screens and report to probation, he claims, was because of his bouts with COVID and a possible embolism. In sum, he argues that the trial court abused its discretion because his violations were technical and did not warrant a full revocation of his probation.

[13] On appeal, we neither reweigh the evidence nor judge the credibility of the witnesses. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). Rather, we consider the evidence most favorable to the conviction and draw reasonable inferences therefrom. *Id.* Regarding his alleged ailments, we observe that the evidence was spotty at best. Gunter and his wife have provided the court with no medical evidence of his bouts with COVID, nor notes from his doctor to excuse him from reporting to probation or drug screens. Whether Gunter experienced all, some, or none of his alleged physical ailments, he still violated the terms of his probation on multiple occasions.

[14] Moreover, his violations were not mere status offenses. As the trial court observed, Gunter's failure to appear for drug screens for a period of seven months and being discharged from a required treatment program were significant. The trial court also noted that Gunter had already been granted considerable leniency in light of the sentence modification. Gunter repeatedly

violated the terms of his probation for nearly a year, and we cannot say that the trial court abused its discretion in ordering Gunter to serve the balance of his sentence in the DOC.

[15] Judgment affirmed.

May, J., and Foley, J., concur.