

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tama G. Butts,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 17, 2023

Court of Appeals Case No.
22A-CR-2200

Appeal from the Madison Circuit
Court

The Honorable David A. Happe,
Judge

Trial Court Cause No.
48C04-1505-F5-795
48C04-1511-F5-1925

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

- [1] Appellant Butts raises a single issue for our review, namely, whether the trial court abused its discretion when it revoked his community corrections placement and ordered the remainder of his sentences in two cases to be served at the Department of Correction.

Facts and Procedural History

- [2] On May 28, 2015, Tama Butts was arrested after he entered the office of Dr. Robert Anderson and stole \$90 in cash and Dr. Anderson's iPhone. On May 29, 2015, in Cause Number F5-795, the State charged Butts with Level 5 felony burglary and Class A misdemeanor theft. Butts entered into a plea agreement with the State on August 17, 2015, in which he agreed to plead guilty as charged in exchange for a four-and-one-half-year sentence, with three years to be served on community corrections and one-and-a-half years to be served on probation. The trial court accepted the agreement and sentenced Butts accordingly. Conditions of Butts probation include abstaining from the use of alcohol and illicit drugs, bond reporting, obtaining employment for thirty-five hours per week, and providing written verification of that employment.
- [3] Butts promptly failed to comply with the conditions of his probation. On November 9, 2015, the probation department filed a notice of violation of probation alleging Butts did not abstain from the use of alcohol and drugs, had unknown whereabouts, failed to pay fees, and escaped from the work release center. Butts admitted that he violated probation on cause F5-795 and the trial

court ordered him to serve received 987 days in the Department of Correction, with credit for time served.

[4] In addition, on November 13, 2015, the State charged Butts with a new offense of Level 5 felony escape in Cause Number F5-1925. On the same date that Butts admitted to the probation violations in F5-795, he pleaded guilty to the Level 5 felony escape on cause F5-1925. The trial court ordered Butts to serve four years, two years executed in the Department of Correction, and two years suspended and served on probation, to be served consecutively to the sentence in F5-795. The trial court recommended the Purposeful Incarceration Program and stated it would consider a sentence modification if Butts completed the program.

[5] On June 12, 2020, the State filed a notice in both cause numbers that Butts had violated his probation by committing new criminal offenses, including theft and unauthorized entry of a vehicle and failing to make curfew. Butts admitted to the violations. At the disposition, the court revoked Butts's probation and ordered eighteen months to be served in community corrections.

[6] On October 12 and 15, 2021, the Madison County Community Corrections filed a notice of continuum of sanctions in both cause numbers. Butts's work release was terminated because he was disrespectful of participants, had unknown whereabouts and unaccountable time, failed to meet financial obligations, and committed new criminal offenses. Butts admitted to being disrespectful and having unknown whereabouts but denied failing to pay fees

and committing new offenses. The trial court ordered Butts to serve sixty-one days in the Madison County Jail, followed by home detention. At the disposition hearing, the trial judge warned Butts that he had “used up every ounce of lenience, and then some” for this case, and a violation of Continuum of Services would result in time at the Department of Correction. Tr. Vol. II, p. 118.

[7] In March 2022, Butts admitted to testing positive for methamphetamine and amphetamines. Between April 19 and June 22, 2022, Butts received eight conduct reports for failure to comply with curfew. As of June 22, Butts missed multiple payments and had an outstanding balance of one thousand two hundred sixty-two dollars and ninety-seven cents owed to the Community Justice Center. On June 27, the State also alleged that Butts committed a home detention violation of forgery, by forging signatures on multiple verification papers for job search times.

[8] At the evidentiary hearing, Butts denied the unauthorized entries, claiming he was not given the appropriate amount of time to commute to work. Butts testified that he did not commit forgery on verification papers for jobs. However, Butts admitted one paper was not signed at the place of potential employment but at a friend’s home. The trial judge considered Butts’s history of violations, his frivolous behavior, and the multiple opportunities for Butts to change his pattern of behavior. The trial court found Butts violated the conditions of his community corrections, thus revoking the balance of his probation in ?F5-795 and F5-1925 sentences. The court ordered Butts to serve

420 days, with credit for time served, in the Department of Correction. Butts now appeals.

Abuse of Discretion

- [9] Butts argues that the trial court abused its discretion when it revoked his community corrections sentence. Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Id.* “If 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.” *Id.*
- [10] Probation revocation is a two-step process. First, the trial court must make a factual determination that the defendant violated a condition of probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). And violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation. *Woods*, 892 N.E.2d at 640. When a defendant violates a condition of his probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of the initial sentencing.” Ind. Code § 35-38-2-3(h)(3).

- [11] Butts argues that the trial court abused its discretion when it sentenced him to serve the balance of his previous community corrections sentence to be served in the Department of Correction. Butts testified he violated probation because of difficulty commuting to work in the allowable time, disputed portions of the allegedly outstanding payment fees, and that he attempted to comply with his sentence's terms and conditions. Butts asserted that these violations were technical in nature, and requested that the matter be remanded to the trial court for the issue of an appropriate sanction based on the technical violations.
- [12] The trial court gave Butts a considerable number of opportunities to change his behavior. The court offered Butts the Purposeful Incarceration Program, potential sentence modification, and multiple opportunities to complete the work release program, home detention, and continuum of services. However, Butts failed to comply with the conditions of any of his placements. Instead, Butts violated the terms and conditions of his community corrections four times, resulting in the escape charges in F5-1925. Butts did not take advantage of the chances he was given to rehabilitate himself, and the trial court noted that Butts cannot continue to receive leniency after repeatedly violating the conditions of his probation. Tr. Vol. II, p. 151. Thus, we cannot say that the trial court abused its discretion when it declined Butts's request to continue to serve his sentence on probation.

Conclusion

[13] For all of these reasons, the trial court did not abuse its discretion when it revoked Butts's probation and ordered him to serve his previously suspended sentences in the Department of Correction.

[14] Affirmed.

May, J., and Bradford, J., concur.