

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Billy Everett Irvin, Jr.

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

January 17, 2023

Court of Appeals Case No.
22A-CR-1963

Appeal from the
Noble Circuit Court

The Honorable
Michael J. Kramer, Judge

Trial Court Cause No.
57C01-2003-F6-3

Vaidik, Judge.

Case Summary

- [1] Billy Everett Irvin, Jr., appeals the trial court’s order that he serve his one-year suspended sentence for violating his probation. We affirm.

Facts and Procedural History

- [2] In February 2020, the State charged Irvin with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. Irvin pled guilty to both counts, and the trial court sentenced him to an aggregate term of 365 days, all suspended to probation.¹ Irvin’s probation started in December 2021.
- [3] On April 20, 2022, about four months after starting probation, the probation department filed a “Probation Violation Report” alleging that Irvin violated his probation in the following ways: (1) Irvin admitted to his probation officer on April 14 that he had recently used marijuana and had used methamphetamine “[a] few times” since starting probation; (2) Irvin tested positive for methamphetamine, amphetamine, alcohol, and marijuana on April 14; (3) in January Irvin was referred to complete Moral Reconciliation Therapy (MRT) for his substance-abuse issues, but he hadn’t started as of April 20; (4) Irvin didn’t report to probation on April 6 and 13; (5) in March Irvin reported living at two

¹ The trial court ordered Irvin’s sentence to be served consecutive to his sentences in two other cause numbers, but those sentences are not at issue in this appeal.

addresses, but he didn't live at either; (6) Irvin didn't have full-time verifiable employment as ordered; and (7) Irvin admitted to his probation officer on April 14 that he was living with a drug user who had an arrest warrant and pending charges. Appellant's App. Vol. II p. 60. A hearing was held in July 2022. Irvin admitted violating his probation, and evidence was presented as to sanction. Irvin's probation officer, Danielle Iovino, testified about Irvin's failure to comply with several of his probation conditions. She explained that although Irvin currently had a job, it was his first job in six or seven months, and it wasn't full time as ordered. In addition, Iovino had trouble locating Irvin at the addresses he provided. He had provided an address for a hotel and a business, but he lived at neither. Irvin also admitted living with a drug user who had an arrest warrant and pending charges, which wasn't allowed. Iovino said that Irvin had tested positive for drugs six times (the results of the seventh test were pending) and failed to appear for three probation appointments. According to Iovino, Irvin tried to qualify for community corrections as a sanction for this probation violation, but he didn't show up for the appointment and wasn't approved. Finally, Iovino testified that Irvin was ordered to start MRT in January, but six months later he still hadn't started. The trial court ordered Irvin to serve his one-year suspended sentence in jail.

[4] Irvin now appeals.

Discussion and Decision

[5] Irvin contends the trial court should not have ordered him to serve his one-year suspended sentence for violating his probation. Trial courts enjoy broad discretion in determining the appropriate sanction for a probation violation, and we review only for an abuse of that discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[6] Irvin argues the trial court should have given him “[a] sanction of something less than full back up” because he is “wrestling with substance abuse disorder,” which “negatively impact[s] his ability to comply with his probation.” Appellant’s Br. pp. 6, 7. There is no doubt that Irvin has substance-abuse issues, but he did not take advantage of the help he was given. Irvin was referred to substance-abuse therapy but never attended. As Iovino explained, Irvin didn’t comply with the basics of probation, like providing a correct address or showing up for appointments. Given Irvin’s many failures on probation, it was reasonable for the court to conclude that he wouldn’t follow the rules if he were placed on something less restrictive than incarceration. The court did not abuse its discretion in ordering Irvin to serve his one-year suspended sentence in jail.

[7] Affirmed.

Riley, J., and Bailey, J., concur.