

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Justin R. Wall
Wall Legal Services
Huntington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Tori M. Teusch,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 14, 2022

Court of Appeals Case No.
22A-CR-1648

Appeal from the Huntington
Circuit Court

The Honorable Davin G. Smith,
Judge

Trial Court Cause No.
35C01-1908-F4-230

Robb, Judge.

Case Summary and Issue

- [1] Tori M. Teusch appeals the trial court’s revocation of her suspended sentence raising one issue for our review, namely whether the trial court abused its discretion in ordering her to serve three years of her previously suspended sentence in the Indiana Department of Correction (“DOC”). Concluding the trial court did not abuse its discretion in imposing this sanction, we affirm.

Facts and Procedural History

- [2] In August 2019, the State charged Teusch with Level 4 felony burglary, Level 6 felony possession of methamphetamine, Level 6 felony possession of a hypodermic syringe, and Class A misdemeanor theft. The State dismissed the theft charge, and Teusch pleaded guilty to the remaining counts. On November 4, the trial court sentenced her to six years with two years served on community corrections home detention with electronic monitoring and four years suspended to probation.
- [3] On December 10, 2020, the Huntington County Community Corrections Department (“Community Corrections Department”) filed a petition to revoke Teusch’s community corrections placement, alleging that Teusch had violated the terms of community corrections by testing positive for methamphetamine and amphetamine. At the revocation hearing held on December 21, Teusch admitted to the allegations, and the trial court found that Teusch had violated the terms of community corrections. The trial court ordered Teusch to serve an

additional sixty days of her original sentence and then “resume her previously ordered terms and conditions of community corrections and probation.”

Appellant’s Appendix, Volume II at 55.

[4] On April 20, 2021, the Community Corrections Department filed a second petition to revoke Teusch’s community corrections placement, alleging that Teusch had violated the terms of community corrections by submitting a diluted drug screen, failing to complete and return an accountability journal, and having six unauthorized stops over a period of four days. The following day, the Community Corrections Department filed an amended petition, adding the allegation that Teusch had cut off her ankle monitor. Six days later, on April 27, Teusch’s probation officer filed a petition to revoke Teusch’s probation, alleging that Teusch had committed the new crime of Level 6 felony escape when she cut off her ankle monitor. At the revocation hearing held on July 19, the trial court ordered Teusch to serve the remaining balance of her community corrections time, 172 days, at the DOC; “secure placement in a halfway house where she [would] go immediately upon her release”; and complete the halfway house program “as an additional term of probation.” *Id.* at 60.

[5] On April 25, 2022, Teusch’s probation officer filed a second petition to revoke Teusch’s probation, alleging that Teusch violated the terms of her probation when she was terminated from her halfway house program for violating the weekend pass rules. At a status conference held on May 16, Teusch admitted to the allegation. The trial court ordered Teusch to serve an additional 120

days of her originally suspended sentence through community corrections on home detention with electronic monitoring, and the court required Teusch to obtain a GED.

[6] On June 13, the Community Corrections Department filed a third petition to revoke Teusch's placement, alleging that Teusch violated the terms of community corrections when she was terminated from a residential recovery program. Two days later, Teusch's probation officer filed a petition to revoke Teusch's probation, alleging the same violation. At an admission and disposition hearing held on July 11, Teusch admitted to the allegations, and the trial court found that Teusch had violated the terms of her community corrections and her probation. At the dispositional portion of the hearing, Teusch told the trial court:

I have messed up and I thought the [residential recovery program] would be a good fit for me. But there was women there doing drugs at the house and it triggered me really bad. And I was going to call community corrections and talk to 'em about it, get moved to another halfway house. . . . And I was doing all the classes, I was going to [Narcotics Anonymous] meetings every week– four times a week. I was working on my GED, I was starting work. I'm a year and almost three months clean, but I feel like I still need the structure.

Transcript of Proceedings, Volume II at 33. Teusch asked the trial court to “consider modifying the terms of her community corrections and her probation to order her to complete” a different recovery program that had agreed to accept her. *Id.* at 34.

[7] At the conclusion of the dispositional portion of the hearing, the trial court terminated Teusch’s probation and ordered her to serve three years of her sentence that had previously been suspended to probation in the DOC. The court told Teusch:

You’ve been here multiple times. It appears to me that you just don’t want to follow the rules. You don’t want to comply with what you’re required to do. You’ve had multiple chances. I am going to order that you serve three years of incarceration. . . . I suggest that . . . while you’re incarcerated, you figure out what’s leading you to make bad choices repeatedly. Why you can’t follow the rules and live a normal and successful life. Otherwise, you’ll just be back [in this court] when you’re done with your incarceration.

Id. at 37. Teusch now appeals.

Discussion and Decision

[8] Probation is not a right, but instead, it is a matter of grace left to the trial court’s discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Once a trial court orders probation, the judge is given considerable leeway regarding how to proceed and may revoke probation if a violation occurs. *Id.* Accordingly, the decision to revoke probation is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances of the present case. *Id.* On appeal, we do not reweigh the evidence or judge the credibility of witnesses. *Ripps v. State*, 968

N.E.2d 323, 326 (Ind. Ct. App. 2012). Rather, we consider only the evidence most favorable to the judgment. *Id.*

[9] Teusch does not dispute that she violated the terms of her probation. Her sole argument is that the trial court abused its discretion by ordering her to serve three years of her previously suspended sentence in the DOC. To begin, we note that probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). The first step requires that the trial court make a factual determination as to whether the probationer violated the terms of her probation. *Id.* Although the probationer is generally entitled to certain due process protections, when the probationer admits the violation, as Teusch did, those safeguards are unnecessary, and the trial court may proceed to the second step. *Id.*

[10] The second step requires that the trial court determine whether a violation warrants revocation. *Id.* Proof of a single violation is sufficient to permit a trial court to revoke probation. *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). When the trial court determines revocation is appropriate, Indiana Code section 35-38-2-3(h) provides that the trial court may order one or more of several sanctions, including the execution of all or part of the original suspended sentence. *Holsapple v. State*, 148 N.E.3d 1035, 1042 (Ind. Ct. App. 2020).

[11] Teusch contends that in determining the sanction to be imposed, the trial court should have “given some mitigating weight” to her acceptance of responsibility

for her violations, her recent successes in the residential recovery program, and her tenure of sobriety. Appellant’s Brief at 14. However, in determining the appropriate sentence upon finding a probation violation, “trial courts are not required to balance aggravating or mitigating circumstances[.]” *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014) (quotation marks omitted), *trans. denied*. While the trial court could have weighed the mitigating circumstances in favor of a lighter sanction, it had no obligation to do so. *See id.*

[12] Teusch violated the terms of her probation by failing to complete the residential recovery program. In addition, Teusch had two prior probation violations – one for committing the crime of escape and another for failing to complete a halfway house program. And Teusch violated the terms of her community corrections placements by testing positive for illegal substances, submitting a diluted drug screen, and cutting off her ankle monitor. In light of Teusch’s multiple violations and the nature of those violations, the trial court was within its discretion to find that Teusch was a poor candidate for another community corrections program or to continue on probation. Therefore, the trial court did not abuse its discretion by ordering Teusch to serve three years of her previously suspended sentence in the DOC.

Conclusion

[13] We conclude that the trial court did not abuse its discretion by ordering Teusch to serve through incarceration three years of her previously suspended sentence

as a sanction for her probation violation. Therefore, we affirm the trial court's judgment.

[14] Affirmed.

Mathias, J., and Foley, J., concur.