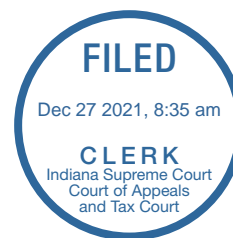


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Steven Stephanoff, Jr.,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

December 27, 2021

Court of Appeals Case No.  
21A-CR-1541

Appeal from the Ripley Circuit  
Court

The Honorable Ryan J. King,  
Judge

Trial Court Cause No.  
69C01-1510-F5-16

**Bradford, Chief Judge.**

## Case Summary

- [1] Steven P. Stephanoff, Jr., violated the terms of his probation before his term of probation had even officially begun. The trial court sanctioned Stephanoff by revoking one year of his previously-suspended three-year sentence. On appeal, Stephanoff contends that the trial court abused its discretion in doing so, arguing that the trial court failed to consider rehabilitative steps that he had taken in the time between the violation and the probation revocation hearing. We affirm.

## Facts and Procedural History

- [2] On June 1, 2017, Stephanoff was convicted of Level 5 felony operating a vehicle after receiving a lifetime suspension and was sentenced to six years, with three years executed and three years suspended to probation. He was released from the Department of Correction (“DOC”) on April 7, 2019. A term of probation relating to a Hancock County conviction was scheduled to end on October 2, 2021, and Stephanoff’s probationary term for his underlying conviction at issue was scheduled to begin on October 3, 2021.
- [3] On June 5, 2020, Stephanoff was charged with Class A misdemeanor operating a motorboat while his license was suspended. On July 20, 2020, the State filed a petition to revoke Stephanoff’s probation, alleging that he had violated the terms of his probation by committing a new offense. The trial court conducted

an evidentiary hearing on the State's petition on May 11, 2021, during which Stephanoff admitted to violating the terms of his probation.

[4] In considering how to sanction Stephanoff's violation, the trial court found the fact that Stephanoff had committed a new criminal offense before he "actually went on probation" to be aggravating, noting that

I mean, that's seldom done. That's pretty tough to do. At least, that's underwhelming I guess, one may say, aggravating another may say, disappointing, someone could say. Um, but certainly, I think the State pointed it out, it is true that is an aggravating circumstance. Um, if you violate your probation before you start it, you're probably not a great candidate for it. And if you're not a great candidate for probation you probably just do in the [DOC].

Tr. Vol. II p. 42. The trial court also found Stephanoff's criminal history, which includes seven previous felony convictions, six previous misdemeanor convictions, and five prior probation violations, to be an aggravating circumstance. The trial court revoked one year of Stephanoff's three-year suspended sentence.

## Discussion and Decision

[5] Stephanoff appeals the trial court's order revoking his probation. "Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

The trial court determines the conditions of probation and may revoke probation if the conditions are violated. 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. 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. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

*Id.* (internal citations omitted). Indiana Code section 35-38-2-3(h) provides, with respect to a probation violation, that

[i]f the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more 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.

[6] Stephanoff contends that the trial court abused its discretion by revoking one year of his three-year suspended sentence. Specifically, he argues that the trial court "abused its discretion by not considering the rehabilitative progress [he]

made between the time of his arrest on his probation violation and the date of his fact-finding hearing.” Appellant’s Br. p. 11. We disagree.

[7] In ordering Stephanoff to serve one year of his previously-suspended three-year sentence, the trial court considered the progress that Stephanoff claimed to have made, noting “I hope you’ve changed, I really do, for your family [and] for your employer.” Tr. Vol. II p. 44. The trial court stated, however, that it could not “look past the violation [or Stephanoff’s] criminal history and do nothing.” Tr. Vol. II p. 44. We cannot say that the trial court abused its discretion by finding that if you violate the terms of your probation before you start it, you are probably not a great candidate for probation.<sup>1</sup> The trial court also considered Stephanoff’s somewhat lengthy criminal history, which, again, includes seven previous felony convictions, six previous misdemeanor convictions, and five prior probation violations. Given the record before us, we cannot say that the trial court abused its discretion in revoking and ordering that Stephanoff serve one year of his previously-suspended three-year sentence.

[8] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.

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<sup>1</sup> We have consistently held that “a defendant’s probationary period begins immediately after sentencing and ends at the conclusion of the probationary period.” *Rosa v. State*, 832 N.E.2d 1119, 1122 (Ind. Ct. App. 2005) (citing *Gardner v. State*, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997)).