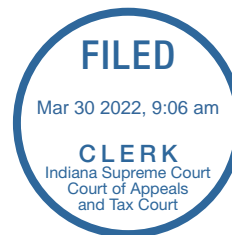


MEMORANDUM DECISION

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

Larry Knight,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 30, 2022

Court of Appeals Case No.
21A-CR-2555

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-1309-FA-616
16D01-1309-FA-617

Bailey, Judge.

Case Summary

- [1] Larry W. Knight entered into a plea bargain for the disposition of two criminal charges and two notices of probation violations. Upon Knight's admission that he had violated the terms of his probation, the trial court ordered that Knight be incarcerated in the Indiana Department of Correction ("DOC") for 1,440 days, which had previously been suspended to probation. Knight presents the sole issue of whether the trial court abused its discretion by ordering that he serve 1,440 days in the DOC.¹ We affirm.

Facts and Procedural History

- [2] On November 19, 2014, Knight pled guilty to two counts of child molesting, as Class B felonies.² He was given concurrent sentences of twenty years, with six years suspended to probation. Knight was subsequently released to probation, upon the conditions that he refrain from using illicit substances, commit no additional criminal offense, complete a sex offender program, and keep the

¹ Knight articulates an additional issue, that is, whether he was denied due process because he was not provided with written notice that the State would seek to prove that Knight violated his probation by committing the new criminal offense of failure to register as a sex offender. However, Knight admitted to violating the terms of his probation, obviating the necessity for the State to present evidence to meet its burden of proof. We observe that, had Knight challenged the validity of his admission to a probation violation, the proper vehicle for challenging the validity of his admission is that of post-conviction proceedings. See *Kirkland v. State*, 176 N.E.3d 986, 988 (Ind. Ct. App. 2021). Moreover, Knight does not challenge the voluntariness of his plea agreement or ask that it be set aside. The relief he requests in this appeal is limited to that of "remand to the trial court for reconsideration of what sanction, if any, is appropriate for submitting two positive drug screens on a first petition alleging probation violations." Appellant's Brief at 11.

² Ind. Code § 35-42-4-3.

probationary department apprised of his residence. In December of 2020, and again in February of 2021, Knight's drug screens were positive for the presence of methamphetamines. In April of 2021, he was charged with disorderly conduct, a Class B misdemeanor.³

[3] On April 29, 2021, the State filed a petition to revoke Knight's probation in each of the child molesting cases, alleging that Knight had two positive drug screens, he had not enrolled in a sex offender treatment program, and he had been charged with disorderly conduct. In May of 2021, Knight was charged with failure to register as a sex offender, a Level 6 felony.⁴ The State did not file an amended notice of probation violation to include the charge of failure to register as a sex offender. However, the State and Knight entered into a plea agreement that addressed the probation violation allegations, the pending charge of disorderly conduct, and the pending charge of failure to register as a sex offender.

[4] On September 16, 2021, Knight and the State appeared in court and presented the terms of the plea agreement. Knight agreed to plead guilty to failure to register as a sex offender, with the sentence to be capped at 410 days.⁵ The State agreed to dismissal of the disorderly conduct charge. Knight agreed to

³ I.C. § 35-45-1-3.

⁴ I.C. § 11-8-8-17.

⁵ Knight was given a sentence of 328 days for this offense.

admit to having violated his probation and the sanction to be imposed was capped at 1,440 days.

[5] To establish a factual basis for the admission to violation of probation, Knight testified that he had failed to report his current residence or had not lived at the residence reported to his probation officer, he had failed to comply with sex offender registration requirements, and he had failed two drug screens. The trial court accepted the plea agreement and dismissed the disorderly conduct charge.

[6] On October 20, 2021, the trial court conducted a hearing to determine the appropriate consequence for Knight's violation of probation. Knight testified and admitted that he had committed the felony of failure to register and had failed drug screens. He attributed his conduct to paranoia, improper medication, and undue influence from a girlfriend. He further testified that he had obtained a promise of employment, he was amenable to supervision, and his mother was moving back into the area to provide support. The trial court found that Knight had violated the terms of his probation by using methamphetamines and committing a new criminal offense, and ordered that Knight serve 1,440 days in the DOC, the maximum permitted under the plea agreement. Knight now appeals, arguing that the trial court should have accorded him greater leniency.

Discussion and Decision

- [7] Placement on probation “is a matter of grace and a conditional liberty that is a favor, not a right[.]” *State v. I. T.*, 4 N.E.3d 1139, 1146 (Ind. 2014) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). Moreover, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). We review the trial court’s probation-related decisions for an abuse of discretion, which occurs when the court’s decision is clearly against the logic and effect of the facts and circumstances or when the court has misapplied the law. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013).
- [8] If a person violates a condition of probation—even a single condition—the trial court “may revoke ... probation.” Ind. Code § 35-38-2-3. Upon a violation of probation, the court may (1) “[c]ontinue the person on probation, with or without modifying or enlarging the conditions”; (2) “[e]xtend the person’s probationary period for not more than one (1) year beyond the original probationary period”; and/or (3) “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” *Id.*
- [9] “Probation revocation is a two-step process.” *Heaton*, 984 N.E.2d at 616. First, the court must determine whether the person violated a condition of probation. *Id.* Second, if the court identifies a violation, it must determine the appropriate consequence. *Id.* In imposing a consequence, the court does not abuse its discretion so long as it complies with Indiana Code Section 35-38-2-3 and

selects among the enumerated consequences. *See Wann v. State*, 997 N.E.2d 1103, 1106 (Ind. Ct. App. 2013) (“Generally speaking, as long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the trial court may properly order execution of a suspended sentence.”).

[10] On appeal, Knight concedes that he “admitted that he violated the conditions of his probation by failing to keep probation advised of his residence, failing to comply with the sex offender registry, and failing two drug screens.”

Appellant’s Brief at 11 (citing Tr. Vol. II, pg. 9.) He then contends that “the only allegations contained in the State’s written notice and established at hearing were Knight’s two failed drug screens,” *id.*, and thus the trial court should have confined its consideration of misconduct to the drug screens. In Knight’s view, the appropriate “factors” for the trial court’s consideration were the failed drug screens and Knight’s “mental state.” (*Id.* at 12.) He asks that we “remand for resentencing in a manner commensurate with the appropriate violations and his mental health status at the time of the violations.” (*Id.* at 13.)

[11] Because Knight violated a condition of his probation, Indiana Code Section 35-38-2-3(h) authorized the trial court to “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” The court was authorized to do so without regard for any alleged aggravating or mitigating circumstances. *See Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018) (noting that the applicable statute “imposes no requirement upon the trial court to balance aggravating and mitigating circumstances” when imposing a consequence for a probation violation).

[12] Knight seems to suggest that, notwithstanding a plea agreement that incorporates the allegations of which a probationer has had actual knowledge, a trial court must disregard any admission or evidence of a probationary violation if such does not mirror the original allegations preceding the plea agreement. Knight does not provide authority for this proposition. Nevertheless, even if a court considers improper grounds for revocation, generally, where a violation is “alleged and proved, revocation may be sustained on that ground alone[.]” *Jaynes v. State*, 437 N.E.2d 137, 140 n.3 (Ind. Ct. App. 1982). We discern no reason to apply a different rule in the context of the trial court’s selection of a consequence for a probation violation. The trial court would have acted within its discretion to order that Knight serve 1,440 days in the DOC even if the sole grounds for revocation were the two failed drug screens.

[13] The trial court did not abuse its discretion in ordering Knight to serve 1,440 days of his previously suspended sentence.

[14] Affirmed.

Mathias, J., and Altice, J., concur.