

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Valerie K. Boots
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

George L. Wallace,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 20, 2022

Court of Appeals Cause No.
22A-CR-1511

Appeal from the Marion Superior
Court

The Hon. Mark Stoner, Judge

The Hon. Jeffrey Marchal,
Magistrate

Trial Court Cause No.

49D32-0612-FC-237133

Bradford, Chief Judge.

Case Summary

- [1] In December of 2021, while on probation, George Wallace violated the rules of his community-corrections work release. Community-corrections officers attempted to handcuff Wallace following an incident at the Duvall Residential Center. Wallace resisted the officers' attempts to handcuff him before ultimately complying when an officer drew his taser. Even then, officers could only handcuff one hand as they escorted Wallace to a holding cell. The officers reentered the cell to place Wallace in trip gear, or a belly chain with wrist and leg shackles, which Wallace also resisted. The State filed a notice of a community-corrections violation. In June of 2022, the trial court conducted a hearing after which it (1) found that Wallace had violated the conditions of his probation, (2) revoked his community-corrections placement, and (3) ordered him to serve the remaining 631 days of his executed sentence in the Department of Correction (“the DOC”).

Facts and Procedural History

- [2] In 2007, Wallace pled guilty to class C felony auto theft, class D felony resisting law enforcement, and class D felony possession of marijuana. In accordance with a plea agreement, the trial court sentenced Wallace to six years of incarceration, four of which would be executed (one of those in the DOC and the rest in community corrections) and two suspended to probation. The trial court ordered this sentence to be served consecutive to the sentence imposed in an unrelated case.

- [3] On April 11, 2008, Wallace admitted that he had violated the terms of his probation and the trial court revoked his probation and community-corrections placement. The trial court ordered Wallace to serve five years executed on community-corrections work release following the completion of his eighteen-year sentence in an unrelated case.
- [4] In July and August of 2021, the State filed notices of probation violations against Wallace. In late August, the State filed an amended notice of a community-corrections violation. A few months later, Wallace admitted to the alleged violations and returned to community-corrections work release at the Duvall Residential Center. In December of 2021, the State filed a third notice of a community-corrections violation.
- [5] The December violation arose when, while at the Duvall Residential Center, Wallace attempted to speak with Lieutenant Amanda Morin about visiting the hospital for an injury he had sustained when he had “zipped up [his] pants” at work a few days prior. Tr. Vol. II p. 73. Wallace was waiting in line at the front desk as Lieutenant Morin spoke with four or five other persons. As Wallace approached Lieutenant Morin and attempted to speak with her, Officer AbdurRasheed Abdul-Haqq told Wallace to wait until Lieutenant Morin had finished speaking with the other residents. Wallace, already “upset that [Morin] wasn’t paying attention[,]” “became upset and took an aggressive stance” towards Officer Abdul-Haqq and said something along the lines of, “I’m not f[***]ing talking to you.” Tr. Vol. II pp. 56, 66.

[6] After that exchange, Officer Abdul-Haqq asked Wallace to place his hands behind his back to be placed in handcuffs. Wallace “resisted at first” and did not place his hands behind his back. Tr. Vol. II p. 57. Wallace began to comply after Sergeant William Burton stood up and withdrew his taser as a precautionary measure. Even then, Officer Abdul-Haqq could only cuff one of Wallace’s hands “due to whatever was going on, resisting or just couldn’t get his arm behind his back.” Tr. Vol. II p. 57. Officer Abdul-Haqq and Sergeant Burton escorted Wallace to a nearby holding cell to give Wallace time to calm down. Wallace began to kick and bang on the cell door. Sergeant Burton and Officer Abdul-Haqq decided to reenter the cell to place Wallace in trip gear, which Wallace resisted by “curling into a ball” or “curling forward to keep them from getting his hands,” and telling Officer Abdul-Haqq that he would “beat his a[**].” Tr. Vol. II pp. 60, 61, 68. The officers never successfully placed Wallace in trip gear because “he would not comply.” Tr. Vol. II p. 69. Lieutenant Morin compromised with Wallace to abandon the trip gear in exchange for his calming down. Finally, the officers left Wallace in the holding cell and a nurse came to evaluate his hand which had been injured during the incident.

[7] In June of 2022, the trial court held a contested hearing on the December violation after which it found that Wallace had violated the conditions of his probation. Consequently, the trial court revoked Wallace’s community-corrections placement and ordered him to serve the remainder of his executed sentence, 631 days, in the DOC.

Discussion and Decision

[8] Wallace alleges that the trial court abused its discretion in ordering him to serve the balance of his sentence. We review a trial court’s sentencing decision in probation-revocation proceedings for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court’s decision “is clearly against the logic and effects of the facts and circumstances[.]” *Bennett v. State*, 862 N.E.2d 1281, 1286 (Ind. Ct. App. 2007). Under Indiana Code section 35-38-2-3(h), a trial court that has found a defendant in violation of a term of his probation may: (1) continue the defendant on probation without modification; (2) extend the defendant’s probationary period for not more than one year beyond the original period; or (3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

[9] “[P]robation and community corrections programs serve as alternatives to commitment to the DOC,” and decisions for both “are made at the sole discretion of the trial court.” *Treece v. State*, 10 N.E.3d 52, 56 (Ind. Ct. App. 2014) (internal quotation omitted), *trans. denied*. A defendant is not entitled to probation or community corrections, as “placement in either is a matter of grace and a conditional liberty that is a favor, not a right.” *Id.* We will uphold a probation revocation if “there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation.” *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). Probation revocation is a two-step process: first, the trial court must determine whether a

probation violation actually occurred, and second, whether the violation warrants revocation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008) (citing *Morrissey v. Brewer*, 408 U.S. 471, 479–80 (1972)).

[10] Wallace contends that, given his physical condition at the time, his violation does not warrant such a severe sanction. We, however, disagree. The trial court acted within its discretion in sentencing Wallace to serve the remainder of his sentence in the DOC. *See* Ind. Code § 35-38-2-3(h). The record shows that during the December incident, Wallace became aggressive towards Officer Abdul-Haqq and resisted Officer Abdul-Haqq’s initial attempts to handcuff him. Further, once placed in the holding cell, Wallace began to bang on and kick the cell door. Wallace also resisted the officers’ attempts to place him in trip gear by “curling into a ball” to prevent the officers from performing their duties. Tr. Vol. II p. 68. Although their discretion is not unbounded, trial courts “have considerable leeway in deciding how to proceed” when defendants violate terms of their probation. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Based on the facts before us, we cannot say that the trial court abused its discretion in deciding that Wallace’s violation warranted the revocation of his probation.

[11] Moreover, Wallace’s history suggests that he “simply is not a good candidate for Community Corrections placement.” Tr. Vol. II p. 84. This was not Wallace’s first violation, but his third. Wallace previously violated the conditions of his probation, for which the trial court had ordered him to serve five years in community-corrections work release after the completion of an

eighteen-year sentence. In July of 2021, the State filed its first probation violation notice. In August, the State filed a second probation violation notice. In October, Wallace admitted to those alleged violations and returned to community corrections at the Duvall Residential Center. Just two months later, Wallace again violated the community-corrections rules, which culminated in the trial court revoking his probation. “Proof of any one violation is sufficient to revoke a defendant’s probation[,]” and here we have multiple instances of Wallace’s community-corrections violations. *Brooks v. State*, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998), *trans. denied*. Therefore, despite Wallace’s alleged physical condition at the time, we cannot agree that the trial court abused its discretion. Wallace essentially asks us to reweigh the evidence, which we will not do. *See Woods*, 892 N.E.2d at 639–40.

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

Mathias, J., and Pyle, J., concur.