MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Angela D. Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

June 2, 2022

Court of Appeals Case No. 21A-CR-2815

Appeal from the Vigo Superior Court

The Honorable John T. Roach, Judge

Trial Court Cause No. 84D01-1603-F4-633

Robb, Judge.

Case Summary and Issue

[1] Angela Brown pleaded guilty to arson and was sentenced to six years with credit for time served and five years and 336 days suspended to probation. Several months after Brown began serving her probation, the State alleged she had violated numerous terms and conditions. After an evidentiary hearing, the trial court found Brown had violated her probation and ordered that she serve the entirety of her previously suspended sentence in the Indiana Department of Correction ("DOC"). Brown appeals, arguing the trial court abused its discretion in its choice of sanction. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] In June 2015, Brown was living in a house owned by Mark Oster and had been ordered to vacate the property by June 23 in an eviction proceeding. On June 22, the house was damaged by fire that investigators believed was intentionally set. Brown was charged with arson, a Level 4 felony.

[3] In January 2017, Brown pleaded guilty to arson as charged pursuant to a plea agreement which provided for a sentence of six years, with the sentence to be suspended to formal probation for a period of five years and 336 days. Her period of probation was to be served consecutively to the sentence she was

serving in 84D01-1312-FC-3767 ("FC-3767").[1] Thus, Brown did not begin serving her probation in this case until early 2021. The conditions of her probation included that she not possess or use any controlled substances, submit to drug/alcohol screening tests as requested, report to the probation office as directed, and enroll in and successfully complete an appropriate alcohol and drug program. *See* Appellant's Appendix, Volume 2 at 70-71.

[4] In May 2019, the probation department filed a notice of probation violation in both FC-3767 and this case alleging Brown had violated her probation by testing positive for amphetamines and methamphetamine on seven occasions between January and April 2019, had failed to submit to drug screens on thirteen occasions during that period, and had not yet entered a sober living facility as previously ordered. Brown admitted the allegations in the notice. Her four-year suspended sentence in FC-3767 was revoked and ordered to be executed on home detention as a direct commitment to community corrections. Brown was returned to probation in this case. In October 2019, the probation department filed another notice of probation violation in FC-3767 and this case, pursuant to which her direct commitment in FC-3767 was revoked and she was ordered to serve her suspended sentence in that case in the DOC. Following

[1] In FC-3767, Brown was sentenced to six years with four years suspended for fraud on a financial institution, a Class C felony.

completion of that executed sentence, Brown was to be returned to probation in this case.

[5] In March 2021, Brown began serving her period of probation in this case. On August 24, 2021, the probation department filed a notice of probation violation alleging that Brown had missed five scheduled appointments with the probation department since starting probation; tested positive for amphetamine, methamphetamine, and alcohol in April, and amphetamine and methamphetamine in diluted samples in June and August; failed to submit to four scheduled drug screens; failed to call into the UA Hotline on eight occasions; and failed to provide any documentation that she had enrolled in a substance abuse treatment program as ordered. In October and November, amended notices of probation violation were filed, alleging that Brown submitted a drug screen in September that tested positive for marijuana, amphetamine, methamphetamine, and alcohol, and in October that tested positive for marijuana, amphetamine, and methamphetamine; failed to submit to one drug screen and to call the UA Hotline on one occasion; and failed to timely inform the probation department of a change of address.

[6] At an evidentiary hearing in November, Brown's probation officer, Kelsey Kennedy, testified about each of the allegations, but did note that Brown had enrolled in and completed three or four sessions of substance abuse treatment through the Choices program since the August notice of probation violation.

She noted that Brown "appears to have severe substance abuse issues which [are] clearly exhibited by her continued drug use. . . . [O]ne (1) of these [positive] screens are showing levels of methamphetamine use to be greater than eighty thousand (80,000) Nano grams per milliliter [of blood]. Uh, the cut off for our drug screens are ten (10) Nano grams per milliliter just for reference, so that is very, very high[.]" [Transcript of] Evidentiary and Disposition Hearings ("Tr."), Volume 2 at 9. Kennedy did not believe probation was in Brown's best interest:

> I don't feel that she's taking it completely seriously. . . . She's exhibited this pattern before as described on our previous probation case so this is something that Ms. Brown does repeatedly over and over. [A]nd she doesn't seem to care that these things are going to get her into trouble. . . . [A]t this point, it doesn't appear that the less structured community supervision probation is appropriate. I believe that she needs more structure . . . than I am able to provide right now for her.

Id. at 10-11. Kennedy recommended that Brown serve ninety days in jail and then be returned to probation.

[7] Kennedy was the only witness at the evidentiary hearing. At the conclusion of Kennedy's testimony, the trial court found that the "unrefuted evidence"

showed Brown had violated probation "on numerous instances" since being placed on probation. *Id.* at 16. With the agreement of the parties, the trial court proceeded immediately to a dispositional hearing.

[8] Brown testified that she is primarily responsible for the care of her significant other, who is partially paralyzed. She agreed that she needed treatment to help overcome her addiction and informed the court that she had been attending Choices since the end of September, where she has a "great support system" and is held accountable. *Id.* at 20-21. She indicated she is looking at things differently now and knows it is important not to have methamphetamine in her system because her boyfriend and her children need her. She asserted she is "ready to overcome" and wants the Choices program to work. *Id.* at 20. Brown asked that she not be ordered to serve time in jail but that additional probation terms be added as the court deemed appropriate, or, in the alternative, that any jail time the trial court ordered not start immediately so that she could get care in place for her boyfriend.

[9] The State argued that "it appears that anytime it gets closer to court [Brown] starts getting compliant and then once court is set out for a few months, then she goes back to her old ways. . . . We've seen this in prior probation cases." *Id.* at 27. The State agreed with probation's recommendation for ninety days in jail followed by a return to probation "to see if things change." *Id.* at 28.

[10] Addressing the parties' requests regarding disposition, the trial court stated:

> The problem with adding conditions is that we've added and added and added and added and added, and the State is absolutely one hundred percent (100%) accurate. When we get close to court, you start calling, you start meeting your appointments. When we set you out [for] review . . . saying get compliant . . . [y]ou fail to get compl[ia]nt. You keep using. You miss appointments. You miss screens. You do it on your terms. Regardless of how many chances we've had just on this probation violation, you're not doing what you're supposed to do. And this is a repeated pattern with you.
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> * * *
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> Your actions speak much louder than your words today, Angela. Much louder. And you don't do well unless you're incarcerated, and that's all you've shown us. . . . The fact that probation says ninety (90) days and not five (5) years three hundred thirty-six (336) days, which is what you have left and what you are facing, says maybe they think a short period in jail would jolt you back

> to help you realize that this is it. I don't know whether that is going to work. I tend to doubt it.

Id. at 29-31. The evidentiary hearing was held on a Wednesday and the trial court ordered Brown to report to the county jail on Friday morning at 9 a.m., ordered a community corrections evaluation, scheduled a further hearing in two weeks, and took disposition under advisement until then.

[11] At that continued dispositional hearing, the trial court noted that it had followed up with community corrections, which had determined that Brown was not eligible for direct placement. The trial court further observed:

> Unless you are facing some kind of sentence or disposition, you don't see the benefit of treatment, and as soon as we release you to treatment, you go back to use. . . . We have tried every possible resource that we have locally to get you treatment, and it doesn't work[.]

Id. at 36. Accordingly, the trial court entered the following order:

> [Brown] has failed numerous attempts at treatment in various local settings. She returns to use when not under strict supervision, including during the review period, and after recent court appearances, on the current Notices of violation.

> Accordingly, [Brown's] suspended sentence of five (5) years, three hundred thirty-six (336) days is revoked and she is ordered to serve the same in the [DOC]. . . .
>
> The court is ordering [Brown] into Purposeful Incarceration. Upon successful completion of the clinically appropriate substance abuse treatment program as determined by [DOC], the court will consider a modification of the sentence to community corrections.

Appealed Order at 1. Brown now appeals.

Discussion and Decision

I. Standard of Review

[12] Probation is a "matter of grace" left to the discretion of the trial court, 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." *Id.*

[13] If a violation is proven, the trial court then must determine if the violation warrants revocation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). 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 impose one or more of several sanctions, including the execution of all or part of the sentence that was suspended at the time of the initial sentencing. *Holsapple v. State*, 148 N.E.3d 1035, 1039 (Ind. Ct. App. 2020).

[14] A trial court's decision imposing sanctions for a probation violation is reviewed for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law. *Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015), *trans. denied*.

II. Sanction for Violation of Probation

[15] Brown concedes the trial court's finding that she violated the terms of her probation was correct, as she did not dispute the State's evidence regarding her violations. But she argues the trial court's order that she "serve over 2,100 days in prison, where the State had only asked for 90 days to be served in jail, was an abuse of discretion." Brief of Appellant at 7. However, Brown cites to no authority stating that the trial court is obligated to accept the State and/or

probation department's recommendation when imposing a sanction for a probation violation. And indeed, we can find no such authority. Rather, "ultimately it is the *trial court's* discretion as to what sanction to impose under the statute." *Abernathy v. State*, 852 N.E.2d 1016, 1022 (Ind. Ct. App. 2006) (emphasis added).

[16] Further, Brown asserts that the trial court "seemed to be under the impression that, because Brown was not eligible for placement in the community corrections program, its only option was revocation of the entirety of Brown's suspended sentence." Br. of Appellant at 9. But the trial court's statements make it clear the trial court knew it could revoke less than the entire suspended sentence. It simply did not agree with the State that "a short period in jail would jolt [Brown] back to help [her] realize that this is it[,]" given her history of probation violations related to drug use and the fact that "every possible [local treatment] resource" had failed. Tr., Vol. 2 at 31, 36.

[17] Brown was alleged to have violated her probation in this case on several occasions before she even began serving it. *See supra* ¶ 4; *cf. Champlain v. State*, 717 N.E.2d 567, 571 (Ind. 1999) (explaining that probation may be revoked at any time, including "prior to the start of probation"). Although Brown only faced consequences for those violations in FC-3767, she did not rise to the opportunity presented by being returned to probation in this case. Instead, upon beginning to serve her probation in this case in March 2021, she tested

positive for drugs repeatedly beginning in April, among other violations. Moreover, in its choice of sanction, the trial court acknowledged Brown's substance abuse issues by recommending that she participate in Purposeful Incarceration and indicating it was willing to consider a modification to her sentence if she successfully completed an appropriate substance abuse treatment program. Under these circumstances, we cannot say the trial court abused its discretion in imposing a sanction.

Conclusion

[18] The trial court did not abuse its discretion in revoking Brown's probation and ordering that she serve her entire previously suspended sentence in the DOC.

[19] Affirmed.

Pyle, J., and Weissmann, J., concur.