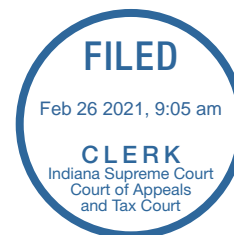


MEMORANDUM DECISION

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

Devon M. Sharpe
Jenner, Pattison & Sharpe
Madison, 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

James S. Mardello,
Appellant / Respondent,

v.

State of Indiana,
Appellee / Petitioner.

February 26, 2021

Court of Appeals Case No.
20A-CR-1793

Appeal from the Jefferson Circuit
Court

The Hon. Richard Striegel, Sr.,
Judge

Trial Court Cause No.
39C01-1602-F5-158

Bradford, Chief Judge.

Case Summary

- [1] In April of 2017, James S. Mardello pled guilty to Level 5 felony methamphetamine possession and was sentenced to five years of incarceration, all suspended to probation. In July of 2020, the State petitioned to revoke Mardello's probation based on allegations of illegal drug use, new criminal charges, and failure to pay his probation fees. In September of 2020, Mardello admitted to the allegations, and the trial court revoked his probation and ordered that he serve the balance of his previously-suspended sentence. Mardello contends that the trial court abused its discretion in ordering him to serve his previously-suspended sentence. Because we disagree, we affirm.

Facts and Procedural History

- [2] On April 22, 2017, Mardello pled guilty to Level 5 felony methamphetamine possession, and, on May 10, 2017, the trial court sentence him to five years of incarceration, all suspended to probation. On July 6, 2020, the State petitioned to revoke Mardello's probation on the basis of allegations that he had used methamphetamine and THC; had been charged with Level 6 felony methamphetamine possession, Class B misdemeanor marijuana possession, and Class C misdemeanor illegal possession of paraphernalia; and had failed to pay his probation fees. At a hearing on September 1, 2020, Mardello admitted to the allegations in the State's revocation petition, and the trial court ordered him to serve the remaining 1713 days of his previously-suspended sentence.

Discussion and Decision

[3] Mardello argues that the trial court abused its discretion in ordering him to serve the balance of his previously-suspended sentence. “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) (citing *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*). The Indiana Supreme Court has held that “a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard[,]” explaining that

[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. 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.

Prewitt, 878 N.E.2d at 187. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[4] Violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Where a violation of the terms of probation has been established, Indiana Code subsection 35-38-2-3(h)(3) allows the trial court to “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing[,]” and the “[c]onsideration and imposition of any alternatives to incarceration is a ‘matter of grace’ left to the discretion of the trial court.” *Monday v. State*, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996). “When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not

reweigh the evidence or judge the credibility of the witnesses.” *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans denied*.

[5] We conclude that the trial court did not abuse its discretion in ordering Mardello to serve his previously-suspended sentence. Mardello admitted to violating the terms of his probation by using illegal drugs, being charged with three crimes, and failing to pay his fees. Mardello’s admitted violations of the terms of his probation are sufficient to support the trial court’s revocation and order that he serve the balance of his previously-suspended sentence. *See Gosha*, 873 N.E.2d at 663. Mardello argues that his truthfulness with his probation officer and traumatic life events contributing to his drug addictions warrant reconsideration of the trial court’s revocation of his probation. While Mardello’s truthfulness about his illegal drug use saved the State the trouble and expense of conducting drug tests, this is tempered by the fact that he almost certainly knew that the results would be positive. Moreover, the trial court was not required to credit Mardello’s testimony about the impact of traumatic life events on his illegal drug use, and apparently did not. In the end, Mardello’s argument is nothing more than an invitation to reweigh the evidence, which we will not do. *See Vernon*, 903 N.E.2d at 536.

[6] We affirm the judgment of the trial court.

Kirsch, J., and May, J., concur.