

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David William Filchak,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2022

Court of Appeals Case No.
21A-CR-2143

Appeal from the Vermillion Circuit
Court

The Honorable Robert M. Hall,
Special Judge

Trial Court Cause No.
83C01-1808-F4-7

Pyle, Judge.

Statement of the Case

- [1] David Filchak (“Filchak”) appeals the sentence imposed after he admitted that he had violated the terms and conditions of his probation. Filchak specifically argues that the trial court abused its discretion when it ordered him to serve the remainder of his previously suspended sentence. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court abused its discretion when it ordered Filchak to serve the remainder of his previously suspended sentence after he violated the terms and conditions of his probation.

Facts

- [3] In 2018, thirty-five-year-old Filchak pleaded guilty to Level 4 felony dealing in methamphetamine and Level 5 felony dealing in methamphetamine. Pursuant to the terms of the plea agreement, the trial court sentenced Filchak to an aggregate sentence of nine years for the two offenses. The trial court’s December 2018 sentencing order provided that upon Filchak’s successful completion of a clinically appropriate substance abuse treatment program as determined by the Department of Correction (“the DOC”), the trial court would consider modifying Filchak’s sentence.

- [4] In February 2020, the DOC advised the trial court that Filchak had successfully completed a clinically indicated addiction recovery treatment program and was eligible to be considered for a sentence modification. Filchak filed a motion to modify his sentence, which the trial court granted in April 2020. The trial court suspended the remaining seven years of Filchak's nine-year sentence and placed Filchak on probation. One of the terms of Filchak's probation was to successfully complete all programs at Truman House ("Truman House"), and another term was to abstain from the use of controlled substances.
- [5] In March 2021, a drug test showed that Filchak was positive for amphetamine and methamphetamine. Filchak's probation officer told Filchak that Filchak "was facing seven years going back to the DOC" and that Filchak "needed to pull his weight and comply with the rules of Truman House." (Tr. Vol. 2 at 69). Filchak agreed to report to the probation department for the next four weeks and stated that he understood that future probation violations could lead to the revocation of his probation.
- [6] Two months later, in early May 2021, the director of Truman House discharged Filchak from Truman House after Filchak again tested positive for amphetamine and methamphetamine. Despite this being the second violation of the conditions of his probation, Filchak was allowed to return to Truman House with the same terms of probation.
- [7] At the end of May 2021, Filchak tested positive for methamphetamine and amphetamine for a third time, and the director of Truman House again

discharged Filchak from Truman House. In June 2021, the State filed a petition to revoke Filchak's probation based on Filchak's failed drug test in late May 2021 and subsequent discharge from Truman House.

[8] At the August 2021 revocation hearing, the trial court heard the evidence as set forth above. In addition, Filchak admitted the violation. Further, Filchak's probation officer testified that she "should have filed the revocation after the first sanction and [she] didn't [because she was] trying to give him a grace period and this is where we ended up." (Tr. Vol. 2 at 71).

[9] At the conclusion of the hearing, the trial court stated as follows:

The danger that you present to others and particularly to yourself with the continued use of the drugs and it seems to me as though the best thing to protect you at this point in time in your life given your inability to conform with the requirements that have been placed on you and multiple attempts at trying to get around those with the multiple bad drug screens, the petition for revocation will be granted and you will be remanded back to the custody of the Sheriff for the execution of the balance of your sentence.

(Tr. Vol. 2 at 77).

[10] Filchak now appeals.

Decision

[11] Filchak argues that the trial court abused its discretion when it ordered him to serve his entire previously suspended sentence after he violated the terms and conditions of his probation. We disagree.

[12] Probation is a matter of grace and a conditional liberty that is a favor, not a right. *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015). Once a trial court has exercised its grace in this regard, it has considerable leeway in deciding how to proceed when the conditions of placement are violated. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). If this discretion were not given to trial courts and sentences were scrutinized too severely on appeal, trial courts might be less inclined to order probation. *Id.* Accordingly, a trial court's sentencing decision for a probation violation is reviewable for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* If a trial court finds that a person has violated his probation before termination of the probationary period, the court may order execution of *all* or part of the sentence that was suspended at the time of the initial sentencing. IND. CODE § 35-38-2-3(h)(3) (emphasis added).

[13] Here, Filchak admitted that he had violated the terms and conditions of his probation by failing a drug test in late May 2021 and being discharged from Truman House. In fact, Filchak had failed three drug tests during a three-month period. The trial court was well within its discretion when it ordered Filchak to serve the remainder of his previously suspended sentence.

[14] Affirmed.

Robb, J., and Weissmann, J., concur.