

## MEMORANDUM DECISION

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### ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke  
Wieneke Law Office, LLC  
Brooklyn, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Nicole D. Wiggins  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Gerry N. Neidhamer,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 19, 2023

Court of Appeals Case No.  
22A-CR-2916

Appeal from the Vigo Superior  
Court

The Honorable John T. Roach,  
Judge

Trial Court Cause Nos.  
84D01-2103-F6-852  
84D01-2010-F6-3417

**Memorandum Decision by Judge Weissmann**  
Judges Riley and Bradford concur.

## **Weissmann, Judge.**

- [1] Just days after being released from jail for a past probation violation, Gerry Neidhamer again violated the terms of his probation by leaving his sober living home and overdosing on methamphetamine. As a sanction, the trial court revoked Neidhamer's remaining two years of probation. Neidhamer appeals, arguing that the trial court abused its discretion. We affirm.

## **Facts**

- [2] In May 2021, Neidhamer pleaded guilty to two counts of Level 6 felony residential entry in exchange for the dismissal of a misdemeanor charge for the unauthorized entry of a motor vehicle and a four-year aggregate sentence suspended to probation. Just over a year later, Neidhamer had violated the terms of his probation by continuing to test positive for illegal substances and by repeatedly failing to report to probation as directed. He had also been charged with a new Level 5 felony for allegedly assisting a criminal in dealing methamphetamine as well as a Class B misdemeanor for falsely providing information to police. So Neidhamer again agreed to a deal with the State where he admitted to the probation violations in return for the dismissal of the new charges. The trial court accepted the arrangement and returned Neidhamer to his probation with the added condition that he complete a sober living program.

[3] After discussing his treatment options with his probation officer, Neidhamer entered a sober living program.<sup>1</sup> Yet only four days later, suffering from delusions that the program’s staff were trying to poison him, Neidhamer left the program. Although Neidhamer quickly entered a different sober living program two days later, he again left that facility without staff permission after only a few days. The State then filed a second probation violation alleging that Neidhamer had tested positive for marijuana, methamphetamine, and amphetamine, and failed to complete substance abuse treatment programming.

[4] At an evidentiary hearing, Neidhamer’s probation officer testified that Neidhamer overdosed on methamphetamine and was found unresponsive with a meth pipe in hand just three days after returning to probation in July 2022. The probation officer also testified that Neidhamer reported to the probation department visibly intoxicated, attempted to remove his clothing, and became so disruptive that security had to intervene. According to the probation officer, she “had done everything she could” for Neidhamer during his multiple probationary stints, but Neidhamer “had excuses for everything” and refused to take the necessary steps to help himself. Tr. Vol. II, pp. 11-12. The probation

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<sup>1</sup> The specific treatment program Neidhamer entered—a short-term sobriety facility—did not meet his probation’s requirement that he enter a longer-term “sober living” residential program. App. Vol. II, p. 78. Neidhamer’s probation officer informed him that his stay in the short-term facility did not comply with the terms of his probation but did not consider this a violation so long as Neidhamer entered a qualifying program afterwards. Tr. Vol. II, pp. 13-14.

officer recommended revocation and imposition of the full balance of Neidhamer's previously suspended sentences.

- [5] Finding that Neidhamer had violated his probation for a second time, the trial court revoked Neidhamer's probation and ordered him to serve the nearly two-year balance of his previously suspended sentence in the DOC. Neidhamer appeals.

## **Discussion and Decision**

- [6] "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). Accordingly, we review a trial court's revocation of probation for an abuse of discretion. *Id.* "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law." *Id.* (internal citations omitted). We consider only the evidence most favorable to the judgment and do not reweigh the evidence or the credibility of witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).
- [7] Probation revocation is a two-step process. "First, the trial court must make a factual determination that a violation of a condition of probation actually occurred." *Prewitt*, 878 N.E.2d at 188. "Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation." *Id.* The appropriateness of any sanction issued by the trial court "depend[s] upon the severity of the defendant's probation violation." *Heaton v. State*, 984 N.E.2d

614, 618 (Ind. 2013). As Neidhamer admits to his probation violations, he challenges only the trial court's sanction.

[8] The trial court did not abuse its discretion in revoking Neidhamer's probation. It is well-settled that "a single violation of the conditions of probation is sufficient to support the decision to revoke probation." *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005). This is particularly so when the violation demonstrates the probationer's inability to honor the rules and requirements of his probation. *See Bonner v. State*, 776 N.E.2d 1244, 1247 (Ind. Ct. App. 2002) ("Probation is a criminal sanction wherein a convicted defendant *specifically agrees* to accept conditions upon his behavior in lieu of imprisonment.") (emphasis added). Neidhamer argues, however, that his violations do not reflect his inability to complete his probation because his violations were minor, and he intended to complete a substance abuse treatment program. We disagree.

[9] The goal of Neidhamer's probation was to allow him to participate in the sober living programs he desperately required. His failure to complete these programs—and continue testing positive for illegal drugs—proves his unsuitability for probation. Moreover, the trial court had already extended Neidhamer's probation once for violations stemming from illegal drug use. App. Vol. II, p. 78-79. That Neidhamer would violate his probation only a short time later supports the trial court's decision to revoke his probation. As the trial court put it, "I don't have any other options for you. We've tried probation, it doesn't work." Tr. Vol. II, p. 34.

[10] Finding no abuse of discretion, we affirm the trial court's order.

[11] Affirmed.

Riley, J., and Bradford, J., concur.