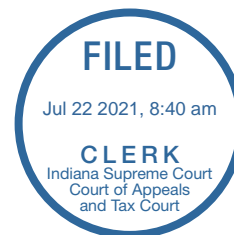


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Anthony Z. Tedesco,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 22, 2021

Court of Appeals Case No.
21A-CR-500

Appeal from the Ripley Superior
Court

The Honorable Jeffrey L. Sharp,
Judge

Trial Court Cause No.
69D01-1905-F6-72

Brown, Judge.

[1] Anthony Z. Tedesco appeals his sentence following the revocation of his probation. We affirm.

Facts and Procedural History

[2] On May 10, 2019, the State charged Tedesco under cause number 69D01-1905-F6-72 (“Cause No. 72”) with Count I, resisting law enforcement as a level 6 felony; Count II, battery against a public safety official as a level 6 felony; and Count III, battery against a public safety official as a level 6 felony.¹ On November 19, 2019, Tedesco and the State filed a Joint Motion in Tender of Conditional Plea Agreement pursuant to which Tedesco agreed to plead guilty to the two counts of battery on a public safety official as level 6 felonies and the State agreed to dismiss the remaining count. The State and Tedesco agreed that, if Tedesco successfully completed probation without any violations, then he would have the right to petition the court to have the level 6 felony convictions reduced to class A misdemeanors, and that the State would not object to the motion. The agreement also provided that sentencing was left to the discretion of the court. That same day, the court held a change of plea hearing.²

¹ Count II alleged that Tedesco “did knowingly or intentionally touch Trevor Comer, a public safety official, in a rude, insolent, or angry manner while the said official was engaged in the official’s duty,” and Count III alleged that he “did knowingly or intentionally touch Randy Holt, a public safety official, in a rude, insolent, or angry manner while the said official was engaged in the official’s official duty” Appellant’s Appendix Volume II at 12-13. In his brief, Tedesco admits he “pushed back against officers who tried to take him in custody and an officer received an ankle injury in the process.” Appellant’s Brief at 5.

² The record does not contain a copy of the transcript from the hearing.

- [3] On December 19, 2019, the court sentenced Tedesco to consecutive sentences of 730 days with 365 days suspended for each of his convictions under Counts II and III and dismissed the remaining count. The court ordered Tedesco to be placed on 730 days of reporting probation.
- [4] In September 2020, the State filed a Petition for Probation Violation Hearing and Order Issuing Warrant. The State alleged Tedesco had been charged with operating a vehicle while intoxicated endangering a person as a class A misdemeanor under cause number 69D01-2009-CM-184 (“Cause No. 184”) and the offense occurred on September 12, 2020. An entry dated September 23, 2020, in Cause No. 184 states that the case was transferred to cause number 69D01-2009-F6-155 (“Cause No. 155”).
- [5] On February 22, 2021, Tedesco and the State filed a Joint Motion in Tender of Conditional Plea Agreement under Cause No. 155 and Cause No. 72 which stated Tedesco agreed to plead guilty to operating a vehicle while intoxicated endangering a minor as a level 6 felony under Cause No. 155 and the State agreed to dismiss the remaining counts in Cause No. 155.³ The motion indicated the State agreed that Tedesco would receive a suspended sentence of 910 days with respect to Cause No. 155. The motion also stated that Tedesco would admit to violating probation in Cause No. 72 as a result of Cause No.

³ The joint motion stated: “(X) The sentence shall be served consecutively/concurrently to [Cause No. 72] filed in the Ripley Superior Court.” Appellant’s Appendix Volume II at 70. Neither consecutively nor concurrently were emphasized.

155 and that he would receive credit time in the amount of 166 actual days with 332 days good time credit.

[6] On February 24, 2021, the court held a hearing and stated that the parties were scheduled for a guilty plea in Cause No. 155 and an admission in Cause No. 72. With respect to Cause No. 155, Tedesco admitted to operating a vehicle while intoxicated on September 12, 2020, in such a manner that persons were endangered and that E.B.G., who was born in 2014, and A.Q.G., who was born in 2018, were passengers in his vehicle. The prosecutor also stated that the probable cause affidavit indicated that the portable breath test returned a result of .182 gram of alcohol per 210 liters of breath, and Tedesco admitted he acted as described by the State. Tedesco pled guilty, and the court entered judgment of conviction for operating a vehicle while intoxicated endangering a minor as a level 6 felony and sentenced him to 910 days suspended. Tedesco also admitted to violating his probation in Cause No. 72, and the court found that he violated the terms of his probation.

[7] Tedesco testified that he had been incarcerated for almost six months. He indicated he had been working prior to this arrest. When asked where he was working, he answered: "I was working with a friend and then I lost that and I went to a staffing company and got a job there. I just didn't get to start it." Transcript Volume II at 10. He testified that his plan was to go back to the staffing company and "start to put everything back together." *Id.* at 11. He stated that he would be obtaining an assessment for alcohol or substance abuse and was willing to follow any and all recommendations. On cross-

examination, the prosecutor referenced the new criminal offense and Tedesco indicated he had been on probation for five months, had been at a birthday party for his girlfriend's child where he consumed alcohol, and that he had his girlfriend, her two children, and a dog in the car. The court found in part that Tedesco was a "danger to the community," revoked his suspended sentence of 730 days, and gave him credit for 166 days and 332 good time days. *Id.* at 17.

Discussion

[8] Tedesco argues that the trial court's order that he serve his suspended sentence was an abuse of discretion. He asserts he received a fully suspended sentence for the same conduct that formed the basis of his probation violation. He contends he had only a moderate risk for recidivism, had already served a substantial portion of his suspended sentence awaiting sentencing on the probation violation, his mental health and substance abuse history indicated a need for therapeutic services rather than incarceration, and he had a job arranged and planned to return to work upon his release and obtain a substance abuse assessment.

[9] Ind. Code § 35-38-2-3(h), which sets forth a trial court's sentencing options if the court finds a probation violation, provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:

(1) Continue the person on probation, with or without modifying or enlarging the conditions.

(2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

[10] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained 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” and that, “[i]f 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 188. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[11] The record reveals that Tedesco pled guilty to two counts of battery against two public safety officials as level 6 felonies. The trial court initially sentenced Tedesco in December 2019 to consecutive sentences of 730 days with 365 days suspended on each count and ordered that he be placed on 730 days of probation. In September 2020, Tedesco operated a vehicle while intoxicated with his girlfriend and her children as passengers in such a manner that persons were endangered.

[12] The presentence investigation report (“PSI”), which was filed in December 2019, reveals that Tedesco, who was born in 1985, has convictions for illegal

possession of an alcoholic beverage as a class C misdemeanor in 2006, operating a vehicle with an alcohol concentration equivalent to .15 or more as a class A misdemeanor in 2007, possession of marijuana as a class A misdemeanor in 2008, and public intoxication as a class B misdemeanor in 2013. The PSI indicates that Tedesco was unemployed and that he had advised he had primarily worked in the construction field. Tedesco reported that he was diagnosed with bipolar disorder and depression, first consumed alcohol at the age of eighteen, last consumed alcohol seven months earlier, and did not believe he had a problem with alcohol. Tedesco stated he first used marijuana when he was a teenager and reported some use of marijuana as an adult, but denied frequent use. Following his 2013 conviction for public intoxication, the court ordered him to attend alcohol/substance abuse counseling. Tedesco's overall risk assessment score using the Indiana Risk Assessment System placed him in the moderate risk to reoffend category.

[13] Given the circumstances and in light of the record, we cannot say that the trial court abused its discretion in ordering that Tedesco serve his previously-suspended sentence.

[14] Affirmed.

Bradford, C.J., and Vaidik, J., concur.