

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shannon Leeann Zimmerman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2023

Court of Appeals Case No.
23A-CR-685

Appeal from the
Montgomery Superior Court

The Honorable
Heather L. Barajas, Judge

Trial Court Cause No.
54D01-1908-F6-2385

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Shannon Leeann Zimmerman (“Zimmerman”) appeals from the trial court’s order revoking her probation. She raises one issue for our review: whether the trial court abused its discretion when it ordered her to serve the entirety of her previously suspended sentence. Because we find no abuse of discretion, we affirm.

Facts and Procedural History

[2] On March 25, 2020, Zimmerman pleaded guilty to domestic battery resulting in moderate bodily injury, a Level 6 Felony. On March 25, 2020, the trial court sentenced Zimmerman to 788 days with credit for time served, resulting in 730 days suspended to probation. Zimmerman entered probation on the same date and signed the terms of her probation. The terms of her probation included the following term, among others:

You shall not consume or possess any controlled substance without a current valid prescription, nor any synthetic cannabinoids, CBD oil, hemp product or other designer drugs. You shall submit to and pay for alcohol and drug tests of any kind whenever requested by Probation, Law Enforcement or Community Corrections. By signing these terms, you are specifically waiving any objection to the admissibility of any such test results at a revocation hearing.

Appellant’s App. Vol. 2 p. 21.

[3] On September 29, 2021, her probation was transferred from Montgomery County to Marion County for supervision purposes only, and Montgomery County retained jurisdiction over violations and sanctions. On March 21, 2022,

Zimmerman and her probation officer filed an Agreed Violation of Probation, in which she admitted to violating her probation and agreed to extend her term probation for ten months or until she paid all required probation user fees, completed all required community service hours, and completed character restoration or a certified Batterers Intervention Program. On March 30, 2022, the trial court granted the agreement.

[4] While Zimmerman was on probation, she tested positive for drugs on several occasions and also failed to submit to drug screens on numerous other occasions. On February 10, 2021, Zimmerman submitted to a drug screen that tested positive for methamphetamine, amphetamine, and THC. On May 7, 2021, she submitted to a drug screen that tested positive for methamphetamine and amphetamine. She again tested positive for methamphetamine on both January 12, 2022, and on June 25, 2022. Zimmerman failed to submit to drug screens a total of eight times: on February 14, 2022; March 15, 2022; April 15, 2022; May 5, 2022; July 25, 2022; August 31, 2022; September 20, 2022, and October 14, 2022. As of October 27, 2022, Zimmerman had a delinquent balance of \$105 in drug screen fees as well as a delinquent balance of \$655 in probation user fees.

[5] As part of her probation, Zimmerman was to complete mental health counseling, and on June 9, 2020, she was referred to Aspire. However, in September 2021, Zimmerman was unsuccessfully discharged from her mental-health counseling due to being noncompliant with her treatment. Probation sent another referral to Aspire for mental-health counseling in December 2021,

but as of October 27, 2022, she had not completed that mental health counseling and had not engaged with Aspire since she had been unsuccessfully discharged in September of 2021. Additionally, as of October 27, 2022, Zimmerman had only completed and verified three out of her required eighty hours of community service.

[6] On October 28, 2022, the State filed a second petition to revoke probation. A fact-finding hearing was held on February 13, 2023, at which Zimmerman offered no explanation for her positive drug screens. At the conclusion of the fact-finding hearing, the trial court found that Zimmerman violated the terms of her probation by using controlled substances without a prescription, particularly methamphetamine and marijuana; by failing to complete mental health treatment; by failing to complete community service hours; and by failing on multiple occasions to submit drug screens as directed. Later, on the day of the fact-finding hearing, Zimmerman submitted to a drug screen, which came back positive for methamphetamine at a very high level. When asked about the positive screen during her dispositional hearing on March 14, 2023, Zimmerman maintained that she had not used methamphetamine and had no explanation as to why she tested positive for the drug. After a dispositional hearing, the trial court revoked her entire previously suspended sentence of 730 days. Zimmerman now appeals.

Discussion and Decision

[7] Zimmerman argues on appeal that the trial court abused its discretion when it revoked her entire previously suspended sentence. “Probation is a matter of

grace left to the trial court's discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* If a trial court determines that a person has violated a term or condition of probation within the probationary period, the court may impose one 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.

Ind. Code § 35-38-2-3(h).

[8] We review a trial court's selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[9] Zimmerman contends that the trial court's decision to revoke the entirety of her suspended sentence was against the logic and effect of the facts and circumstances in her case because her medical, mental health, and financial situation created a lack of volition to complete the terms of her probation.

“Although not a defense to revocation, lack of volition is often a factor pertinent to a disposition in a revocation proceeding.” *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008). (citations omitted). She further asserts that her attempts to comply with the conditions of probation demonstrate a willingness to abide by probation’s terms.

[10] The evidence presented at the fact-finding hearing demonstrated that Zimmerman committed multiple probation violations. While on probation, she tested positive for methamphetamine on four occasions and failed to submit to drug screens on eight other occasions. Despite being given a second chance to comply with the terms of her probation, she did not complete her mental health counseling or perform her community service, and she continued to test positive for drugs and to fail to submit to drug screens. After approximately three years of probation, Zimmerman had shown very little compliance with the terms of her probation and nearly no rehabilitation. The trial court was well within its discretion to order her to serve her entire previously executed sentence.

[11] Zimmerman does not dispute that she violated the terms of her probation, she only argues that her medical issues and financial situation impaired her ability to comply and created a lack of volition to complete the terms of probation. Zimmerman suffers from diabetes, narcolepsy, and neuropathy in her feet and receives treatment for diagnoses of borderline personality disorder, bipolar disorder, anxiety, depression, and agoraphobia. However, her assertions regarding her health and mental health struggles do not explain how her

conditions make her violations of probation non-volitional or how they caused her to violate the terms of her probation.

[12] Further, Zimmerman's contention of non-volition does not explain her repeated and continued use of methamphetamine, and Zimmerman did not have an explanation for these positive drug screens when testifying at the hearing. In fact, Zimmerman tested positive for methamphetamine at a very high level on the day of the fact-finding hearing, and at the dispositional hearing, again denied using methamphetamine and had no explanation for why she tested positive. The evidence presented revealed that Zimmerman tested positive for methamphetamine beginning in February 2021 and, over the course of her almost three years on probation, had multiple missed and failed screens, even testing positive on the day of the fact-finding hearing. This evidence supported an inference that Zimmerman used methamphetamine throughout her term of probation and was not honest about it.

[13] Although Zimmerman may suffer from several medical conditions and mental health diagnoses, she does not explain how they prevented her from attending counseling and submitting to drug screens or how they caused her to test positive for methamphetamine. Proof of a single violation is sufficient to permit a trial court to revoke probation. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. As long as the proper procedures have been followed in conducting a probation revocation hearing, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence. *Id.* Because of Zimmerman's prior probation

violation and the proof of several violations at the fact-finding hearing, we cannot say that the trial court abused its discretion when it revoked the entirety of her previously suspended sentence.

[14] Affirmed.

Altice, C.J., and May, J., concur.