

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

James Dillon Gunter,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 27, 2024

Court of Appeals Case No.
23A-CR-2104

Appeal from the Howard Superior Court
The Honorable Cheyenne P. Shepherd, Magistrate
Trial Court Cause No.
34D04-2109-F6-2873

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] James Gunter pled guilty to Level 6 felony invasion of privacy, and the trial court sentenced him to two years of incarceration, all suspended to probation. After Gunter admitted to violating the terms of his probation, the trial court ordered him to serve seventy days of his previously-suspended sentence, to be followed by a resumption of probation. Two days after his release from jail, Gunter violated the terms of his probation again by failing to submit to a drug test, a violation that would be followed by many more. In August of 2023, the trial court ordered Gunter to serve 403 days of his previously-suspended sentence, which order Gunter claims was an abuse of discretion. We affirm.

Facts and Procedural History

- [2] Gunter pled guilty to Level 6 felony invasion of privacy and, on September 15, 2022, the trial court sentenced him to two years of incarceration, all suspended to probation. The terms of Gunter's probation included requirements that he report to probation as directed; obey the law; submit to drug testing; follow the recommendations in his case plan, including an alcohol and drug plan; and not possess or consume controlled substances without a prescription.
- [3] On April 10, 2023, the State petitioned to revoke Gunter's suspended sentence, alleging that he had failed to report to probation on November 17 and December 1, 2022, and on February 10, February 20, March 9, and March 23, 2023; had failed to report for drug testing on November 15 and December 26,

2022, and on January 17, February 1, February 6, and March 21, 2023; and had tested positive for amphetamine and methamphetamine on November 21, 2022. The State also alleged that, on January 24, 2023, Gunter had submitted a diluted drug screen. Finally, Gunter had failed to complete twenty hours of community service, which he had been ordered to do. After Gunter admitted these violations, the trial court ordered him to serve seventy days of his previously-suspended sentence before returning to probation.

[4] Gunter was released from jail on May 25, 2023. Two days later, Gunter failed to submit to drug testing; on June 3, 2023, he used methamphetamine; on June 21 and 27, 2023, he failed to submit to drug testing; and on July 3, 2023, his probation officer instructed him to attend Turning Point for treatment and to schedule an appointment by July 7, 2023. Gunter, however, did not schedule an appointment or attend any of Turning Point's services. On July 18, 2023, he smoked methamphetamine, and the next day, his urine tested positive for methamphetamine, amphetamine, and suboxone.

[5] On July 21, 2023, the State petitioned again to revoke Gunter's suspended sentence. Gunter's probation officer reported that she had "encouraged the Defendant multiple times to engage in treatment" and had "given the Defendant multiple chances to change his behaviors." Appellant's App. Vol. II p. 88. Gunter, however had indicated multiple times "that his drug use was 'controlled' and he did not consider his use a problem." Appellant's App. Vol. II p. 89. The probation officer believed "that the Defendant is not suitable for

supervised probation as the Defendant is not interested in participating in or undergoing any change in behaviors.” Appellant’s App. Vol. II p. 89.

[6] Gunter admitted his alleged probation violations. When asked why he had not scheduled an appointment with Turning Point, Gunter explained,

I didn’t feel the need and I didn’t want to put myself in a place saying yeah, I can do this when I’m already relying on a ride from my grandfather to bring me there and back. And I just got a new job, I didn’t want to be like, hey I gotta leave here to go take this test. Gotta leave here to go do this Turning Point when I weaned off my suboxone altogether.

Tr. Vol. II p. 9. On August 10, 2023, the trial court revoked Gunter’s probation and ordered him to serve 403 days in jail.

Discussion and Decision

[7] Gunter argues that the trial court abused its discretion in ordering him to serve 403 days of his previously-suspended sentence. 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 v. State, 878 N.E.2d 184, 187 (Ind. 2007). An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and

circumstances. *Id.* “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Id.* at 188.

[8] Probation revocation is a two-step process. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). First, there must be a factual determination that a violation of a probation condition occurred by a preponderance of the evidence. *See id.* Here, Gunter admitted to violating the terms of his probation in several respects, by using methamphetamine, testing positive for drugs, failing to report for drug testing, and not seeking treatment. Any one of those violations would have justified the trial court’s decision to revoke Gunter’s probation and “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(a)(1), -3(h)(3). It is well-settled that the trial court may revoke the defendant’s probation upon proof of a single violation. *See, e.g., Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021) (citations omitted), *trans. denied*.

[9] Gunter has failed to establish that the trial court abused its discretion in revoking his probation and ordering him to serve 403 days of his previously-suspended sentence. From the very start, Gunter demonstrated that he was a poor candidate for probation by using drugs, failing to report for drug testing, and not seeking drug treatment, all of which were terms of his probation. Moreover, Gunter’s behavior did not perceptibly improve after being allowed to continue on probation following the State’s first petition to revoke his suspended sentence, with him violating its terms two days after his release from his stint in jail. Finally, there was no reason for the court to think that Gunter’s

behavior would improve, as he had not acknowledged that he had a drug problem and would not seek treatment. In the words of Gunter’s probation officer, Gunter “is not suitable for supervised probation as [he] is not interested in participating in or undergoing any change in behaviors.” Appellant’s App. Vol. II p. 89. The trial court did not abuse its discretion in ordering that Gunter serve 403 days of his previously-suspended sentence following his admissions to multiple violations of the terms of his probation.

[10] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

ATTORNEY FOR APPELLANT

Eric Grzegorski
Howard County Public Defender
Kokomo, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Indiana Attorney General
Jesse R. Drum
Assistant Section Chief, Criminal Appeals
Indianapolis, Indiana