MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lynsey Carmen Vaughn,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 16, 2023

Court of Appeals Case No. 22A-CR-1970

Appeal from the Johnson Superior Court

The Honorable Peter D. Nugent, Judge

Trial Court Cause No. 41D02-2109-F6-513

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Lynsey Carmen Vaughn appeals the sanction that was ordered following her violation of probation. We affirm in part and remand with instructions to revise the revocation order to accurately reflect the 450 days of Vaughn's probation that the court revoked.

Discussion and Decision

[2] In August 2021, Vaughn shopped at Walmart in Greenwood, used the self-checkout line, scanned some but not all of her items, paid for only the scanned items, and attempted to exit. One of Walmart's asset-protection employees stopped Vaughn and determined that she failed to pay for merchandise totaling approximately $183, including twenty grocery items and a package of hair elastics. The employee contacted law enforcement.

[3] In September 2021, the State charged Vaughn with one count of level 6 felony theft with a prior (2016) misdemeanor theft conviction. On March 9, 2022, the court issued an order accepting Vaughn's guilty plea and entering a 730-day sentence, all suspended to active probation, as per the written agreement.

[4] On April 8, 2022, a petition was filed to revoke Vaughn's probation due to alleged positive results for "Amphetamine, Methamphetamine, Norfentanyl and Fentanyl" during March 30 testing, as well as an allegation of failure to report for an April 7 random drug screen. Appellant's App. Vol. 2 at 48. At an April 28 hearing, the probation department indicated that Vaughn was commencing substance abuse treatment. Accordingly, the alleged violations

were taken under advisement, and the court reset the matter about four weeks out "to see how she's doing." Tr. Vol. 2 at 4.

[5] On May 4, 2022, the probation department filed an amended petition to revoke probation, restating the prior two allegations and alleging that Vaughn tested positive for fentanyl on April 27. At a May 18 hearing, the court learned that Vaughn had not started treatment. The court reluctantly released her back to probation but conditioned the release upon her entry into treatment and compliance with day reporting. Further, the court warned Vaughn that if she continued to violate, a reduced sanction would not be ordered.

[6] At a June 8, 2022 hearing, the court noted a June 7 presumptive positive test for THC and fentanyl, revoked Vaughn's bond, and reset[1] the matter pending confirmatory test results. On June 25, the probation department filed its second amended petition to revoke Vaughn's probation, restating the prior three allegations and alleging that she tested positive for norfentanyl and cannabinoids on June 7.

[7] At a July 2022 hearing, Vaughn admitted all allegations of positive drug test results but denied that she failed to report for one drug screening. The State withdrew the failure to report allegation. The court found that Vaughn violated her probation and then explained the new sentence as follows:

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[1] Another reason for resetting the matter was that both the defense and the State expressed concerns about Vaughn's state of mind on June 8.

> I'm going to revoke and terminate your probation, sentence you to a term of 450 days executed at the Johnson County Jail. Give you credit for 52 days actually served. You are released from probation. It's terminated and revoked. I am going to … I know she owes you $365. I'm going to find her indigent with regards to the $365 owed probation, because she's going to be serving a fully executed sentence.

Id. at 33.

[8] The court reiterated: "So, I'm not putting you back on probation. You're going to serve 450 days with credit for 52 days actually served, and then you'll be released. No probation. No paper." *Id.* When Vaughn inquired as to the length of the sentence, the court clarified: "450 days, do 225 actual, less 52 actual that you've done, so if my math is right, 170 days and you're done. It's a little under six months." *Id*. However, the actual written order on probation revocation requires that Vaughn "serve a total of 540 days executed." Appealed Order at 1. Vaughn appeals.

Discussion and Decision

Section 1 – The written probation revocation order must be corrected to accurately reflect the sentence issued by the court.

[9] Vaughn asserts that the court's written probation revocation order was erroneous because it revoked more time than the trial court ordered in its oral statement. The State concedes the ninety-day discrepancy.

[10] In reviewing sentences, Indiana appellate courts "examine both the written and oral sentencing statements to discern the findings of the trial court." *McElroy v.*

State, 865 N.E.2d 584, 589 (Ind. 2007). Based on the unambiguous nature of the trial court's oral sentencing pronouncement set out *supra*, we conclude that the written order contained a scrivener's error, likely a transposition of two numbers, which incorrectly changed 450 days to 540 days. Consequently, we remand with instructions to correct the written order so that it accurately reflects the 450-day sentence that was referenced repeatedly during the court's oral pronouncement of Vaughn's sentence. The 450-day sentence will then track the corresponding chronological case summary as well.

Section 2 – The court did not abuse its discretion by ordering Vaughn to serve her revoked sentence in jail.

[11] Vaughn challenges the court's decision to order a nonviolent offender who struggles with drug abuse to serve revoked time in jail rather than on community corrections for a portion of time. She contends that if home detention were ordered, she could be monitored, attend treatment, provide for her family, and help her teenage daughter raise an infant.

[12] Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Upon finding that a defendant has violated a condition of her probation, the trial court may "[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(h)(3). In determining the appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances. *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied.* So long as the trial court follows the procedures outlined

in Indiana Code Section 35-38-2-3, the court may properly order execution of a suspended sentence upon a finding of a single violation by a preponderance of the evidence. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied.*

[13] We review the trial court's sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs "only where the trial court's decision is clearly against the logic and effect of the facts and circumstances" before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

[14] As she admitted, Vaughn violated her probation three times by possessing and using various illegal drugs, testing positive beginning just a few weeks after she was sentenced. While the defense argued undue hardship in that Vaughn's fifteen-year-old daughter might need help with her infant, the court opined that it may be best for the daughter and infant not to be around someone who uses amphetamine, methamphetamine, fentanyl, and cannabinoids and who has an F grade with probation. As for Vaughn's claim that finances and timing precluded her from engaging in treatment, the court acknowledged the scarcity of resources but ultimately was concerned that she would be unable to abstain from drugs if not in jail.

[15] Considering the evidence most favorable to the judgment and without reweighing either the evidence or witness credibility, we cannot say that the court's decision to revoke 450 days of Vaughn's previously suspended 730-day sentence was clearly against the logic and effect of the facts and circumstances that were before the court. Indeed, we recognize the grace shown by the court choosing not to revoke *more* than 450 days and reiterate that Vaughn might only serve half of that time. Vaughn has not shown that the court abused its discretion in this regard.

[16] Affirmed in part and remanded.

Robb, J., and Kenworthy, J., concur.