

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James S. Howell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 27, 2022

Court of Appeals Case No.
21A-CR-2712

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-1708-F4-304

Mathias, Judge.

- [1] James S. Howell's probation was revoked by the Switzerland Circuit Court, and he was ordered to serve his previously suspended two-year sentence in the

Department of Correction. Howell appeals, arguing that the trial court abused its discretion when it revoked his probation. Specifically, Howell claims that the State failed to present sufficient evidence to prove the violation, and that the trial court abused its discretion when it ordered him to serve his previously suspended two-year sentence.

[2] We affirm.

Facts and Procedural History

[3] In 2018, Howell pleaded guilty to and was convicted of Level 4 felony attempted sexual misconduct with a minor. He was ordered to serve five years in the Department of Correction with two years suspended to probation. As a part of his plea agreement, Howell was required to comply with the “Indiana Special Probation Conditions for Adult Sex Offenders.” One of the conditions required Howell to “actively participate in and successfully complete a court-approved sex offender treatment program as directed by the court. . . .

Unsuccessful termination from treatment or non-compliance with other required behavioral management requirements will be considered a violation of your probation.” Appellant’s App. p. 33.

[4] While Howell was incarcerated, he completed approximately 75% of a sex offender treatment program through the Department of Correction. But he was released from incarceration before he could complete the program.

[5] Howell began serving his probation on February 22, 2020, and his probation was transferred to Kentucky before he was released from incarceration. Howell

did not receive the sex offender treatment program referral until April 13, 2020, and due to the COVID-19 pandemic, his intake assessment did not occur until the end of December 2020.

[6] During his intake assessment, Howell denied that he committed a sex offense, claiming that he “was set up by the police” who are “100% responsible for the offense.” Appellant’s App. pp. 58, 62; Tr. p. 3. Because Howell refused to acknowledge and accept responsibility for his offense, he was not accepted into the treatment program. The probation department in Kentucky notified the State that Howell had violated his probation. Thereafter, on January 8, 2021, the State filed a notice of probation violation because Howell failed to complete a sex offender treatment program. Howell was not arrested for the violation until September 2021.

[7] The trial court held a revocation hearing on November 5, 2021. The court found that Howell violated his probation and revoked his previously suspended two-year sentence. The court indicated that it would be willing to modify Howell’s sentence if he completed the sex offender treatment program he began while he was incarcerated.

[8] Howell appeals the probation revocation.

Discussion and Decision

[9] Howell argues that the trial court abused its discretion when it revoked his probation. Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). An abuse of discretion occurs if the

decision is against the logic and effect of the facts and circumstances before the court. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Id.* “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.” *Id.*

[10] Probation revocation is a two-step process. First, the trial court must make a factual determination that the defendant violated a condition of probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). And violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation. *Woods*, 892 N.E.2d at 640. When a defendant violates a condition of his 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)*.

[11] First, Howell argues that the State did not prove by a preponderance of the evidence that he violated a condition of his probation.¹ Howell concedes that he did not complete the sex offender treatment program. However, he argues that he did not violate his probation because “he did not refuse to complete the

¹ Because probation revocation proceedings are civil in nature, the State must prove an alleged violation by a preponderance of the evidence. *See Murdock*, 10 N.E.3d at 1267.

program. He was simply not accepted into the program.” Appellant’s Br. at 9. Howell claims that the State did not prove that he violated his probation because it failed to present evidence that “Howell was made aware that he would not be accepted into the program if he did not make these admissions.” *Id.* at 10.

[12] The trial court admitted reports from Howell’s probation officer in Kentucky describing his probation violation. The officer’s report lists the Kentucky Corrections Policy and Procedure explaining that a sex offender who refuses to admit guilt or responsibility will not be accepted into the sex offender treatment program. Appellant’s App. pp. 58, 62. The officer stated that Howell was given “several opportunities to accept or partially accept the sexual offense to no avail.” *Id.* Howell acknowledged that completing a sex offender treatment program was a condition of his probation. Tr. p. 10. Moreover, the trial court noted that between the violation filing date and Howell’s arrest, eight months elapsed where Howell could have taken responsibility for his offense and entered the treatment program. Tr. p. 12. This evidence is sufficient to prove that Howell violated his probation by failing to complete a sex offender treatment program.

[13] Howell also claims that the trial court abused its discretion when it ordered him to serve his previously suspended two-year sentence. Howell argues that his violation was merely “technical.” Appellant’s Br. at 11. He also argues that his

incarceration will impose a hardship on his family for whom he is the sole provider.²

[14] Howell's violation is not "merely [t]echnical." Sex offender treatment is integral to any offender's rehabilitation. The trial court concluded that returning Howell to probation was not going to "serve any particular purpose" because Howell was "unwilling to take the steps necessary to be allowed to get back into that program in Kentucky." Tr. p. 13. The trial court encouraged Howell to complete the program he started while incarcerated in the Department of Correction and instructed Howell to petition the court for a modification of his sentence as soon as Howell could provide proof that he had completed the program. Tr. p. 13. From the evidence presented, the trial court determined Howell was unlikely to complete the required sex offender treatment program unless he was incarcerated.

[15] For all of these reasons, the trial court did not abuse its discretion when it revoked Howell's probation and ordered him to serve his previously suspended two-year sentence.

[16] Affirmed.

² Howell's wife was eight months pregnant on the date of the revocation hearing. We acknowledge the hardship Howell's incarceration will have on his family, but that hardship is not outweighed by the importance of Howell fulfilling the conditions of his probation.

Howell also complains of the delay between the dates of his referral for treatment and his intake assessment due to the COVID-19 pandemic. But that delay is irrelevant to the reason that Howell was not accepted into the sex offender treatment program and had no impact on the probation revocation at issue.

Brown, J., and Molter, J., concur.