

## 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

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Zachery Littleton,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 11, 2021

Court of Appeals Case No.  
20A-CR-1879

Appeal from the Ripley Superior  
Court

The Honorable Jeffrey Sharp, Judge

Trial Court Cause No.  
69D01-1710-F6-208

**Shepard, Senior Judge.**

- [1] Zachery Littleton appeals from the trial court's order revoking his probation and 365 days of his suspended sentence. We affirm.

## Facts and Procedural History

- [2] In October 2017, the State charged Littleton with residential entry as a Level 6 felony,<sup>1</sup> after he broke into a home and stole a television, a DVD player, several DVDs, and games for a videogame console. On March 14, 2018, Littleton and the State entered into a plea agreement for Littleton to plead guilty to the Level 6 felony in exchange for the State agreeing to a sentence of 910 days with 738 suspended. That same day, the trial court accepted the agreement, and Littleton was convicted as charged and sentenced accordingly.<sup>2</sup>
- [3] On August 9, 2018, the State petitioned to revoke Littleton's probation, alleging that he committed a new offense—operating a vehicle without ever having a license, a Class A misdemeanor—and moved to Harrison, Ohio and failed to provide his new address to his probation officer. Littleton admitted to violating probation, and on April 11, 2019, the court granted the State's petition, revoked two days of Littleton's suspended sentence, and extended his probation by 180 days. The court also sentenced Littleton to sixty days suspended to probation for the driving offense, to be served consecutive to his residential entry sentence, and ordered him to complete sixty hours of community service.

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<sup>1</sup> Ind. Code § 35-43-2-1.5 (2014).

<sup>2</sup> On March 20, 2018, in a separate cause, Littleton was convicted of Class B misdemeanor possession of marijuana. He was sentenced to 180 days suspended to probation, to be served concurrent with the residential entry sentence.

- [4] The State filed a second petition to revoke Littleton’s probation on May 17, 2019, alleging that he violated his probation by committing a new offense—Class A misdemeanor possession of paraphernalia. Littleton admitted to the violation, and on November 19, the court granted the second petition and revoked 222 days of his suspended sentence. The court also ordered Littleton to submit to a mental health treatment plan.
- [5] On March 11, 2020, Littleton failed a drug screen by testing positive for marijuana. He was assigned ten additional hours of community service.
- [6] On July 27, 2020, the State filed a third petition to revoke, this time alleging that Littleton violated his probation by failing to appear for community service on three occasions. Littleton admitted the violation. On September 10, the court granted the State’s third petition and revoked 365 days of Littleton’s suspended sentence. Littleton now appeals.

## Issue

- [7] The sole issue Littleton presents on appeal is whether the court abused its discretion by revoking 365 days of his suspended sentence.

## Discussion and Decision

- [8] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Id.*; *see also* Ind. Code § 35-38-2-3(a)

(2015). Upon determining that a probationer has violated a condition of probation, the court may impose one of several sanctions, including ordering “execution of all or part of the sentence that was suspended at the time of initial sentencing.” I.C. § 35-38-2-3(h). When a party challenges the sanction imposed, we review the court’s decision for an abuse of discretion, which occurs when the decision is “clearly against the logic and effect of the facts and circumstances.” *Prewitt*, 878 N.E.2d at 188 (citing *Sanders v. State*, 825 N.E.2d 952 (Ind. Ct. App. 2005), *trans. denied*).

[9] Littleton maintains the court should have granted him “one more chance on probation” because none of his violations were extreme in nature. Appellant’s Br. p. 11. He explained to the court that he missed his community service appointments because a family member had taken his vehicle; he had a child on the way and employment that would start soon; and his mother was suffering from cancer. Littleton argues the court abused its discretion when it revoked a portion of his suspended sentence “[i]n light of the minor nature of his violation, his immediate admission [to the probation violation,] and the undue burden incarceration will have on hi[m] and his family’s [well-being.]” *Id.* at 8.

[10] In support of his argument, Littleton mainly relies on *Johnson v. State*, 62 N.E.3d 1224 (Ind. Ct. App. 2016), as an example of cases in which we have reversed probation revocation sentences “where the trial court has failed to properly consider the nature of the violation and the defendant’s status and admission to the [probation] violation[.]” Appellant’s Br. p. 10. However, *Johnson* is distinguishable from the case before us. *Johnson* involved an

individual with limited intellectual ability who had difficulty understanding the terms of his placement with community corrections. *See Johnson*, 62 N.E.3d at 1226-29. The trial court imposed a severe sentence—ordering Johnson to serve the entirety of the remaining portion of his seven-year executed sentence in the DOC—for minor probation violations that included leaving house arrest for an authorized trip at a time slightly different from that which was authorized, failing to timely pay fees, and sitting on a bench outside his apartment complex during house arrest. *Id.* at 1227-28.

[11] Littleton, by contrast, has been afforded probation numerous times—yet each time and with full cognition, he has violated the terms of his probation. In the instant case, Littleton repeatedly failed to appear for community service even after his probation officer warned him that failure to appear would be a violation of probation. The court ultimately determined that 365 days of Littleton’s suspended sentence should be revoked, “[c]onsidering [his] prior criminal history [and] this being the third probation violation[.]” Tr. Vol. II, p. 12.

[12] Littleton was not entitled to another chance on probation. The decision to sentence him to probation is a matter of grace left to the court’s discretion. *See Prewitt*, 878 N.E.2d at 188. While Littleton’s most recent probation violation was not egregious, and the court could have imposed other sanctions, we find the court’s decision to revoke 365 days of Littleton’s suspended sentence was not an abuse of its discretion.

## Conclusion

[13] We conclude the trial court did not abuse its discretion by revoking 365 days of Littleton's suspended sentence.

[14] Affirmed.

Bailey, J., and Crone, J., concur.