

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Rodney T. Sarkovics  
Sarkovics Law  
Carmel, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
J.T. Whitehead  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Chad Clifford Lewandowski,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 21, 2023

Court of Appeals Case No.  
23A-CR-1794

Appeal from the Hamilton Circuit  
Court

The Honorable Paul A. Felix,  
Judge

Trial Court Cause No.  
29C01-1807-F2-4955

**Memorandum Decision by Judge Brown**  
Judges Vaidik and Bradford concur.

**Brown, Judge.**

[1] Chad Clifford Lewandowski appeals the revocation of his probation and sanction. We affirm.

### ***Facts and Procedural History***

[2] On July 17, 2018, the State charged Lewandowski under cause number 29C01-1807-F2-4955 (“Cause No. 55”) with Count I, burglary as a level 2 felony; Count II, attempted armed robbery as a level 3 felony; and Count III, criminal mischief as a class B misdemeanor. On April 11, 2019, Lewandowski and the State filed a plea agreement which provided that “[s]hould [Lewandowski] enter a plea of guilty” to Count I, burglary as a level 4 felony as a lesser included offense of Count I, then the State would move to dismiss Counts II and III. Appellant’s Appendix Volume II at 45. The agreement provided that the sentence would be determined by the court but served consecutive to that imposed under cause number 29D05-1603-F6-2245 (“Cause No. 45”).

[3] On April 11, 2019, the court entered a sentencing order which indicated it accepted the plea agreement, sentenced Lewandowski to eight years with three years executed as one year in the Department of Correction (“DOC”), two years in work release as a direct commitment to Hamilton County Community Corrections, and five years suspended, and dismissed the remaining counts. The court ordered the sentence to be served consecutive to the sentence under Cause No. 45.

[4] On January 23, 2023, the State filed a 1st Information of Violation of Probation alleging that Lewandowski violated Condition 2 by failing to comply with the

law by committing the offenses of operating a vehicle while intoxicated as a class A misdemeanor and operating a vehicle while intoxicated as a class C misdemeanor on January 19, 2023, as charged under cause number 48H02-2301-CM-274 (“Cause No. 274”) in Anderson City Court. It also alleged that he violated Condition 16 when he “submitted to a PBT which registered positive for alcohol at 0.117” according to the affidavit for probable cause under Cause No. 274. *Id.* at 90.

[5] On January 31, 2023, the court held an initial hearing at which it informed Lewandowski of the potential consequences including: executing a portion of his previously suspended sentence and ordering him to serve that time on home detention, work release, or prison; or revoking his probation and ordering that he serve all of his previously suspended sentence in prison. The court appointed counsel for Lewandowski and scheduled a factfinding hearing for March 14, 2023.

[6] After the court granted motions for continuances by Lewandowski’s counsel, the court held a factfinding hearing on July 11, 2023. Lewandowski’s counsel stated:

Your Honor, we would have an agreement that Mr. Lewandowski will admit the violations as alleged. The case in Anderson City Court has already adjudicated, he’s been convicted of that. And he would also admit to Condition 16. The recommendation would be to revoke probation, have him serve 730 days as an open commitment to Hamilton County Community Corrections. There was a letter sent, I hope the Court has it, on July 7th that shows that he has taken care of a

minimum amount of the arrearage as they required and they would find him acceptable to home detention and/or work release.

Transcript Volume II at 24. The court asked the prosecutor if that was a “fair rendition of the proposal,” and the prosecutor answered affirmatively. *Id.* The court asked Lewandowski if he understood that a proposal from him and the State “comes to me as nothing other than a proposal” and it was “not an agreement that I have to accept, even though I accept your admission today,” and Lewandowski answered affirmatively. *Id.* The court asked Lewandowski if he still wished to enter an admission, and he answered affirmatively.

[7] Lewandowski admitted that he failed to comply with Indiana law on January 19, 2023, by “committing offenses” under Cause No. 274 for which he had “entered a plea of guilty . . . to an offense” and that he violated the condition prohibiting him from consuming alcohol.<sup>1</sup> *Id.* at 26. The court found a factual basis had been established and that Lewandowski had freely and voluntarily entered an admission.

[8] Lewandowski then testified that he had been in substance abuse classes two years earlier and he was prepared to complete those classes. He asserted that he was working as a mold setter for over two years. He also indicated that he had

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<sup>1</sup> Indiana’s Odyssey Case Management System indicates that Lewandowski pled guilty to operating while intoxicated as a class A misdemeanor under Cause No. 274.

two daughters who lived with him and that he and his girlfriend financially supported the children.

[9] The court reviewed Lewandowski's history and stated that it did not agree that the proposal was reasonable and indicated it would enter a sentence at its own discretion. Lewandowski's counsel then presented the testimony of Lewandowski's girlfriend who stated that "being in DOC really scared him into wanting to turn around his life and never put himself back in that position again." *Id.* at 35. She testified that she needed Lewandowski's income to at least maintain her style of living. She stated that Lewandowski had matured since he was originally in the DOC and was more accountable for his actions. When asked if she had any other incidents that caused her concern other than the arrest in Anderson, she answered in the negative. On cross-examination, she indicated that she worked two jobs when Lewandowski went to the DOC earlier.

[10] Lewandowski's counsel stated he still thought that this was "a situation where Community Corrections is the best option, both for Mr. Lewandowski and his family, but also for society as a whole" and "I would guess maybe we would propose adding another year to the open commitment and then maybe some probation afterwards if the Court feels he needs additional supervision." *Id.* at 38. The court stated:

I'm going to revoke the Defendant's probation, order that four years of the previously suspended sentence is to be executed, two years in the Department of Corrections and two years as an open

commitment to Hamilton County Community Corrections. Once again, I find myself saying this often here as I end my term on the bench here, Mr. Lewandowski was not here for a possession of drug case. We do not treat people who have victims in cases the same way we treat addicts. He may be an addict and it may be true that he is, but he has left victims in his wake. In this particular case he broke into somebody's house with a baseball bat with an intent to harm and injure and steal from those people. He has now committed a new criminal offense. We don't give these people, we don't people [sic] that commit offenses like this Community Corrections.

The PSI Report, back when it was done on the original sentence showed that he was a high risk to reoffend. He told me during the sentencing hearing that "Now I have a family, all I want to do now is be a family man. While sitting in jail I thought about my actions and all the time I've wasted with my past addictions. My family needs me. I don't want to let them down. I don't want to keep hurting them." As much as you've said all of those things, it didn't stop you from committing a new criminal offense. I didn't want to be here today, I didn't want to be in this position today, Mr. Lewandowski. But as far as society goes and the burden that is being placed on you going to the DOC, I don't think that's unfair for a person who has fled – I think it was fled – resisted law enforcement in the past, committed the offense of burglary, now driving on the roads while intoxicated. I don't think this is an unfair burden on our society to place you in prison for the short period of time that I am.

*Id.* at 38-39.

### ***Discussion***

[11] Lewandowski argues the trial court "abused its discretion when it revoked [his] probation and ordered him to serve executed time in prison instead of the

agreed upon term of open placement in community corrections.” Appellant’s Brief at 7. He asserts that he “does not challenge the finding that he violated probation because he admitted the violation,” but “challenges the severe sanction imposed.” *Id.* He asserts that the sanction imposed was too harsh considering his stable employment, future schooling opportunity, and support he provided for his family. He requests that his sentence be reversed and his case remanded to the trial court for sentencing consistent with the agreement of the parties.

[12] Ind. Code § 35-38-2-3(h) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) 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.

[13] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained 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” and that, “[i]f 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*, 878 N.E.2d at 188. When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *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. *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

[14] With respect to the proposal, we note that the court informed Lewandowski at the January 31, 2023 initial hearing of the potential consequences of violating his probation. At the July 11, 2023 hearing, upon questioning by the court, Lewandowski indicated he understood that the court did not have to accept the proposal and informed the court that he still wished to enter an admission. We cannot say that the court was required to accept the proposal. *See Isaac v. State*, 605 N.E.2d 144, 146 (Ind. 1992) (trial court is authorized to refuse probation revocation agreement entered between parties), *cert. denied*, 508 U.S. 922, 113 S. Ct. 2373 (1993).

[15] The record reveals that Lewandowski violated his probation by operating a vehicle while intoxicated and by consuming alcohol. While Lewandowski testified that he worked as a mold setter for over two years and that he and his



girlfriend financially supported their children, his girlfriend testified about her ability to support their children when Lewandowski was last in the DOC and the court observed that Lewandowski's prior statements regarding his family did not stop him from committing a new criminal offense.

[16] The presentence investigation report ("PSI") prepared under Cause No. 55 and dated March 28, 2019, reveals that Lewandowski, who was born in 1994, was alleged to be a delinquent for habitual disobedience of parents and theft as a class D felony if committed by an adult in 2011 which resulted in an informal adjustment and an entry stating: "Juvenile is released from terms of informal adjustment, unsuccessful due to incomplete counseling. Cause is subject to redocketing." Appellant's Appendix Volume II at 26. In 2012, he was adjudicated a delinquent for acts constituting possession of a Schedule I, II, III, or IV controlled substance as a class D felony and resisting law enforcement as a class A misdemeanor if committed by an adult. As an adult, Lewandowski has convictions for resisting law enforcement as a class D felony in 2013; illegal consumption of an alcoholic beverage as a class C misdemeanor in 2015; theft as a class A misdemeanor and unlawful possession of a syringe as a level 6 felony in 2016; and theft as a level 6 felony in 2019. The PSI includes a summary of legal history which states that Lewandowski's involvement with the criminal justice system began at the age of seventeen and, as a juvenile, he was "unsuccessfully discharged from one term of informal adjustment and one term of formal probation." *Id.* at 28. It states that he has been sentenced to probation on four occasions and had violations filed for "failure to submit to

screens, failure to report, positive screens, being dishonest about drug use, new arrest and violation of no alcohol condition.” *Id.* It observes that three of his previous probation terms were revoked. It also states that he was on probation under Cause No. 45 at the time of the offense under Cause No. 55.

[17] The PSI indicates that Lewandowski has used marijuana, methamphetamine, and spice. It states that he was ordered by the court to complete substance abuse treatment as a juvenile but never completed it. It further indicates that he “failed to complete Court ordered treatment on more than one occasion as an adult, as well.” *Id.* at 30. In light of the record, we cannot say the trial court abused its discretion.

[18] For the foregoing reasons, we affirm the trial court’s order.

[19] Affirmed.

Vaidik, J., and Bradford, J., concur.