

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bernard B. Eguia,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 10, 2022

Court of Appeals Case No.
22A-CR-790

Appeal from the Wells Circuit
Court

The Honorable Kenton W.
Kiracofe, Judge

Trial Court Cause No.
90C01-1712-F5-34

Altice, Judge.

Case Summary

- [1] Bernard B. Eguia appeals from the revocation of his probation. Specifically, though acknowledging that he violated probation, Eguia contends that the trial court abused its discretion by returning him to the Indiana Department of Correction (the DOC) for 365 days.
- [2] We affirm.

Facts & Procedural History

- [3] In 2018, Eguia pleaded guilty to one count of dealing in methamphetamine, a Level 5 felony, and was sentenced to five years in the DOC, with one year suspended to probation. Following Eguia's successful completion of purposeful incarceration, the trial court modified his sentence on August 26, 2020, suspending the remainder of the sentence and ordering Eguia to serve one year of probation.
- [4] Eguia began supervised probation on August 31, 2020. After failing several drug screens between February and June 2021, his probation was extended by the trial court, in July 2021, for another year. Eguia then failed another drug screen on September 30, 2021, and the probation department put him on "the call-in program" in the hope of holding him more accountable. *Transcript* at 21.
- [5] On October 21, 2021, the State filed a petition to revoke Eguia's suspended sentence, alleging that he had tested positive for methamphetamine and THC on September 30. The trial court issued an arrest warrant the day after the

petition was filed. About a week later, the State amended the petition to add that Eguia had tested positive for methamphetamine and cocaine on October 14 and had failed to report to probation on October 26. On November 4, the State amended the petition again to add allegations that Eguia had failed to report to probation through the call-in line October 28 through November 2 and failed to submit to a drug screen on October 26. Though aware of the arrest warrant, Eguia did not contact his probation officer after October 2021.

[6] Eguia was arrested pursuant to the warrant on March 3, 2022. At his probation revocation hearing on March 23, 2022, Eguia admitted to each of the alleged violations. He claimed that he had relapsed due to his mother's death on October 16, 2021. His probation officer, however, testified that Eguia had tested positive for drugs well before that date and had a total of about thirteen failed drug screens before he stopped screening or contacting probation in late October 2021.

[7] Given the violations, Eguia asked the trial court to place him on home detention. The court, however, determined that it had "no confidence that [Eguia] would be successful on home detention." *Id.* at 46. The court revoked 365 days of Eguia's previously suspended sentence and ordered those days, less twenty days credit, to be served in the DOC. The court further directed that probation terminate upon the completion of the executed sentence.

[8] Eguia now appeals. Additional information will be provided below as needed.

Discussion & Decision

[9] It is well established that 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). Once a trial court has exercised its grace by ordering probation rather than incarceration, the trial court has considerable leeway in deciding how to proceed. *Id.* Accordingly, a trial court’s sentencing decisions for probation violations are reviewable for an abuse of discretion and reversible only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* “If the court finds the defendant has violated a condition of his probation at any time before the termination of the probationary period, and the petition to revoke is filed within the probationary period, then the court may order execution of the sentence that had been suspended.” *Gosha v. State*, 873 N.E.2d 660, 664 (Ind. Ct. App. 2007); *see also* Ind. Code § 35-38-2-3(h) (listing three sanctions that may be imposed upon the finding of a violation: (1) continue the person on probation with or without modification; (2) extend the probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of the initial sentencing).

[10] Eguia does not challenge the trial court’s finding that he violated probation. Rather, he contends that the court abused its discretion by sending him back to the DOC for 365 days without considering that he admitted to each of the probation violations. Eguia improperly relies on *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), and the like, in support of his contention that a trial court must consider a probationer’s admissions when sentencing for a probation violation.

See Berry v. State, 904 N.E.2d 365, 366 (Ind. Ct. App. 2009) (“*Anglemeyer*, however, applies to the imposition of an initial sentence – not a sentence imposed following the revocation of probation.”); *see also Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018) (rejecting probationer’s suggestion that the trial court was “required to treat his admission as a guilty plea and accord it mitigating weight in a balancing of sentencing factors”).

[11] In determining the appropriate sentence upon finding a probation violation, it is well established that a trial court is not required to balance aggravating and mitigating circumstances. *See, e.g., Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. Further, as long the proper procedures have been followed in conducting a probation revocation hearing, a court may order execution of a suspended sentence upon a finding of a single violation by a preponderance of the evidence. *Id.*

[12] Here, in revoking Eguia’s probation, the trial court noted his “lengthy criminal history that includes substance use” and his prior violations of the terms of drug court and parole. *Transcript* at 45. Further, the court observed that after completing purposeful incarceration in this case and receiving a time cut, Eguia had “thirteen failed drug screens while on probation.” *Id.* at 46. Eguia even continued to use drugs after the first modification in July 2021, in which his probation was extended for another year. The court noted that the probation department did not immediately seek revocation but, rather, tried to work with Eguia. In rejecting Eguia’s plea for another chance, the court emphasized that Eguia had been given multiple chances already and that he “put [his] head in

the sand and tried to abscond” for months after the arrest warrant was issued in October 2021. *Id.* The court indicated that it had “no confidence” that Eguia would be successful on home detention. *Id.* Accordingly, it revoked 365 days of the suspended sentence and ordered this time to be served in the DOC.

[13] “Probation is an opportunity that can be squandered.” *Gaddis v. State*, 177 N.E.3d 1227, 1229 (Ind. Ct. App. 2021). The trial court did not abuse its discretion in finding that Eguia had squandered his.

[14] Judgment affirmed.

Vaidik, J. and Crone, J., concur.