

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Brandy Mischell Collins,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 13, 2024

Court of Appeals Case No.
23A-CR-2624

Appeal from the Decatur County Superior Court

The Honorable Matthew D. Bailey, Judge

Trial Court Cause Nos.
16D01-2110-F6-960
16D01-2204-F5-338

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Brandy Collins appeals the trial court’s sanction for her probation violation. The only issues she raises is whether the trial court abused its discretion by ordering her to serve a portion of her previously suspended sentences. We affirm.

Facts and Procedural History

- [2] On April 4, 2022, Collins pled guilty to assisting a criminal, as a Level 6 felony,¹ in cause number 16D01-2110-F6-960 (“F6-960”). The trial court sentenced her to 545 days of incarceration, with two days executed and the remaining 543 days suspended to probation. On August 22, 2022, Collins pled guilty to operating a motor vehicle after forfeiture of license for life, a Level 5 felony,² in cause number 16D01-2204-F5-338 (“F5-338”). Her plea agreement provided that, as a special condition of probation, she would “file a petition for specialized driving privileges.” App. v. II at 48. On November 15, 2022, the trial court sentenced her to 730 days suspended to probation, per the plea agreement.

¹ Ind. Code § 35-44.1-2-5(a)(1).

² I.C. § 9-30-10-17(a)(1).

[3] On April 4, 2023, the probation department filed a petition to revoke Collins's probation in both F6-960 and F5-338 based on a new criminal charge in another county for operating a motor vehicle after forfeiture of license for life, a Level 5 felony. On August 24, Collins admitted violating her probation in both cases. At her October 5, 2023, sanction hearing, Collins admitted that her driver's license had been suspended for approximately twenty years, but she drove anyway in order to get to her place of employment. Collins also admitted that the court had previously given her a chance to petition for specialized driving privileges, but she had failed to do so. Collins requested placement in community corrections home detention as a sanction for her probation violations.

[4] A presentence investigation report previously completed in F5-338 and an attached Bureau of Motor Vehicles record revealed that Collins had prior convictions dating back to 1999 that included: operating a motor vehicle while intoxicated resulting in serious bodily injury;³ driving while license suspended;⁴ leaving the scene of an accident;⁵ battery;⁶ and two separate convictions of

³ I.C. § 9-30-5-4.

⁴ I.C. § 9-30-10-16.

⁵ I.C. § 9-26-1-1.1(b).

⁶ I.C. § 35-42-2-1.

operating as a habitual traffic violator.⁷ In addition, on two previous occasions, Collins had her probation revoked or terminated unsuccessfully.

- [5] The trial court accepted Collins’s admissions to the two probation violations and sanctioned her to 180 days executed on F6-960 and 365 days executed on F5-338, with the sentences to run consecutively with each other, resulting in a total sentence of 545 consecutive days. This appeal ensued.

Discussion and Decision

- [6] Collins challenges the trial court’s decision to sanction her for her two admitted probation violations by revoking her probation and ordering her to serve a combined 545 days of her suspended sentences. “Placement under either probation or a community corrections program is ‘a matter of grace and a conditional liberty that is a favor, not a right.’” *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind.1999)). We review probation violation sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law.” *Id.* (citations omitted). “As with other sufficiency issues, we do not reweigh the evidence or judge the credibility

⁷ I.C. § 9-30-10-4.

of witnesses.” *Jenkins v. State*, 956 N.E.2d 146, 148 (Ind. Ct. App. 2011) (citation and quotation omitted), *trans. denied*.

[7] A probation revocation proceeding is a two-step process. *Heaton*, 984 N.E.2d at 616. First, the trial court must determine whether the preponderance of the evidence showed that a probation violation occurred. *Id.*; I.C. § 35-38-2-3. Second, the trial court must determine whether the probation violation warrants revocation of probation or some lesser sanction. *Heaton*, 984 N.E.2d at 616. In making the latter determination, the trial court may consider such factors as the defendant’s criminal history. *See, e.g., Slater v. State*, 223 N.E.3d 298, 307 (Ind. Ct. App. 2023) (holding the defendant’s criminal history supported the sanction for probation violation).

[8] Indiana Code Section 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.

Our Supreme Court has held that this statute “permits judges to sentence offenders using any one of or any combination of the enumerated powers.” *Prewitt v. State*, 878 N.E.2d 184, 187 (Ind. 2007). And, while probationers must be given the opportunity to present mitigating factors, *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008), the trial court is not required to consider aggravating and mitigating factors when deciding whether to revoke probation, *Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Moreover, a single violation of a condition of probation is sufficient to permit the trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

- [9] Here, Collins admittedly violated the terms of her probation in two different causes by driving to her place of employment without a license. And she also admits she was given the opportunity to apply for specialized driving privileges that would have allowed her to drive to work legally, but she failed to do so. Instead, she chose to drive illegally, in blatant violation of the terms of her probation. Moreover, Collins has a criminal history that includes convictions related to dangerous driving behavior, and she violated the terms of prior probation sentences on multiple occasions. The trial court acted well within its discretion when it revoked Collins’s probation and ordered her to serve a portion of her previously imposed sentences. Collins’s contentions to the contrary are simply requests that we reweigh the evidence and judge witness credibility, which we may not do. *See, e.g., Jenkins*, 956 N.E.2d at 148.

Conclusion

[10] The trial court did not abuse its discretion when it revoked Collins' probation and ordered her to serve a portion of her previously imposed sentences.

[11] Affirmed.

Crone, J., and Pyle, J., concur.

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