

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joseph L. Lamb,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2021

Court of Appeals Case No.
20A-CR-1833

Appeal from the Jefferson Circuit
Court

The Honorable Donald J. Mote,
Judge

The Honorable Richard Striegel,
Senior Judge

Trial Court Cause No.
39C01-1808-F5-901

Altice, Judge.

Case Summary

[1] Within two weeks of receiving a six-year suspended sentence for Level 5 felony failure to register as a sex or violent offender, Joseph L. Lamb violated probation by committing a new criminal offense – Level 4 felony dealing in methamphetamine. Lamb admitted the violation, and the trial court revoked all six years of his suspended sentence and sent him to the Indiana Department of Correction (the DOC). On appeal, Lamb argues that the trial court abused its discretion.

[2] We affirm.

Facts & Procedural History

[3] Lamb was convicted of Class B felony child molesting in 2006 and, as a result, is required to register as a sex offender. Thereafter, he has accumulated three felony convictions for failure to register, with the most recent being in this case. He also has prior felony convictions for theft and battery.

[4] On August 30, 2018, the State charged Lamb in the instant case with Level 5 felony failure to register and alleged that he was a habitual offender. Two months later, Lamb was charged under a separate cause number with Level 6 felony theft. On October 23, 2019, Lamb entered into a plea agreement with the State, pursuant to which he agreed to plead guilty to the felonies charged in both causes and the State agreed to dismiss the habitual offender allegation. The parties also agreed to the following fixed, consecutive sentences: 1) six years entirely suspended to probation for failure to register and 2) two years fully executed for the theft.

- [5] The trial court accepted the plea agreement on October 24, 2019, and sentenced Lamb accordingly. With credit time, Lamb had only three days remaining to serve on his theft conviction. The court ordered him to report, on October 28, 2019, to the Jefferson County Community Corrections Department for his supervised probation.
- [6] Upon his release from jail, Lamb moved in with his girlfriend, Jessica Croxton, who was a known methamphetamine dealer. On November 4, 2019, Lamb was participating in the delivery of seven grams of methamphetamine when he was pulled over in a vehicle driven by Morgan Rowson. At the time, he informed law enforcement that more methamphetamine would be found in the apartment he shared with Croxton. Thereafter, officers recovered approximately nine grams of methamphetamine inside the apartment. Lamb, Croxton, and Rowson were arrested.
- [7] On November 12, 2019, the State charged Lamb with two counts of Level 3 dealing in methamphetamine and one count of Level 5 possession of methamphetamine. The State also filed, on November 15, 2019, a petition to revoke his probation in this case based on the new charges.
- [8] Lamb entered into a plea agreement with the State on July 15, 2019, to resolve the new charges and the probation violation. In exchange for the dismissal of all other counts, he agreed to plead guilty to a lesser included offense, Level 4 felony dealing in methamphetamine, and admit the alleged probation violation. The agreement provided for a fully suspended six-year sentence for dealing and

left sentencing on the probation violation open to the trial court's discretion.

On August 7, 2020, the trial court accepted the plea agreement, which the court described as "very favorable" to Lamb. *Transcript* at 13.

- [9] Thereafter, on September 1, 2020, a sentencing hearing on the pending probation violation was held. Lamb testified and tried to downplay his role in the dealing offense. He also claimed that he needed substance abuse treatment, which he was attempting to arrange upon release. On cross-examination, Lamb acknowledged that he had been given opportunities in the past with probation and suspended sentences and had failed to follow the rules and continued to commit crimes. At the conclusion of the hearing, the trial court revoked Lamb's probation and ordered him to serve his previously suspended six-year sentence in the DOC. Lamb now appeals.

Discussion & Decision

- [10] 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).

[11] On appeal, Lamb asserts that the sanction imposed by the trial court for his admitted violation was an abuse of discretion because the court failed to consider any “progressive sanctions” and did not “consider any type of treatment for Lamb’s obvious drug problem.” *Appellant’s Brief* at 11. Directing us to his own testimony, Lamb also suggests that his “role in the [dealing] offense was relatively minor when compared to the others involved.” *Id.* at 8.

[12] We cannot agree with Lamb that the sanction imposed by the trial court is against the logic and effect of the facts and circumstances. The record establishes that Lamb has a substantial criminal history spanning fifteen years, which is most of his adult life, and he has ignored his sex-offender registration requirements on numerous occasions. Notwithstanding this, he was originally granted significant leniency in this case with a fully suspended six-year sentence and dismissal of the habitual offender allegation. Within days of receiving such grace and being placed on probation, however, Lamb moved in with a drug dealer – his girlfriend – and aided her in dealing methamphetamine. By his own account, Lamb did this to help pay the rent, despite the fact that he had

employment available to him. Further, his claim of having a serious substance abuse issue is not particularly borne out in the record.

[13] Lamb's swift and brazen violation of probation shows that he is ill-suited for probation. In other words, we conclude that the trial court acted well within its discretion.

[14] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.