

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Bryan Andrew Cox,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 10, 2022

Court of Appeals Case No.  
22A-CR-158

Appeal from the  
Grant Superior Court

The Honorable  
Jeffrey D. Todd, Judge

Trial Court Case Nos.  
27D01-2009-F6-634  
27D01-1404-FB-22

**Baker, Senior Judge.**

## Statement of the Case

[1] After Bryan Cox failed to successfully serve a sentence on probation, Cox and the State negotiated a plea agreement addressing two cases. In key part, the agreement provided that Cox would serve his sentences on probation, but any violation of the terms and conditions of probation would result in him serving his suspended sentences in full.

[2] Cox failed to report as required for a treatment program, and the State asked the trial court to revoke his probation. Cox appeals the trial court's revocation of his probation and imposition of sanctions. We affirm.

## Issues

[3] Cox raises two issues, which we restate as:

- I. Whether the trial court erred in revoking Cox's probation.
- II. Whether the trial court abused its discretion in ordering Cox to serve the remainder of his previously-suspended sentences in the Department of Correction.

## Facts and Procedural History

[4] In 2014, a jury determined in Cause Number 27D01-1404-FB-22 ("FB-22") that Cox was guilty of dealing in cocaine, a Class B felony. He then admitted he was an habitual offender. The trial court sentenced Cox to fifteen years for the dealing conviction, plus ten years for the habitual offender sentencing enhancement, for a total of twenty-five years, with five years suspended to

probation. Among other aggravating circumstances, the court determined Cox was on probation at the time he committed his offense.

[5] A court later vacated Cox's habitual offender sentencing enhancement during post-conviction proceedings. In December 2020, by agreement of the parties, Cox was released from the Department of Correction to participate in a "Reentry Intensive Supervision Court" ("RISC"). Appellant's App. Vol. 2, p. 40. Among other terms of his participation in the RISC, Cox agreed to refrain from committing any new crimes and to comply with his probation officer's requirements.

[6] In September 2020, the State petitioned the court to terminate Cox's placement in the RISC, alleging that he had committed numerous violations including skipping drug screens, possessing a firearm, and associating with felons. The court later granted the petition.

[7] Meanwhile, on September 21, 2020, the State filed an information against Cox in Cause Number 27D01-2009-F6-634 ("F6-634"), alleging that he had committed two counts of resisting law enforcement, one as a Level 6 felony and one as a class A misdemeanor, and one count of reckless driving, a Class B misdemeanor.

[8] Cox and the State negotiated a plea agreement, which they signed on December 22, 2020. Cox admitted to violating the terms of his probation in FB-22, and he pleaded guilty as charged in F6-634. In exchange, the State agreed that his

sentences would be served on probation, consecutively to one another. The parties further agreed:

[Cox] shall participate in the Life Change Program and comply fully with the terms of the program. Upon successful completion of the program, [Cox] shall resume formal probation. Should [Cox] fail to complete the Life Change Program, [he] agrees that he has violated the terms of probation in both cases and shall serve the balance of the previously suspended sentence in the Department of Correction.

*Id.* at 48.

[9] The Life Change Program is a structured, residential program administered by the Grant County Rescue Mission. The trial court accepted the parties' plea agreement on December 22, 2020, and Cox's probation officer understood that Cox was supposed to go directly to the Mission immediately upon being released from jail that same day.

[10] Cox did not arrive at the Mission on December 22. Later that same day, an employee of the Mission, James McKinney, saw Cox at a video rental kiosk. McKinney was friends with Cox, and he knew Cox was supposed to join the Life Change Program but had failed to appear earlier that day. He told Cox to report as soon as possible. Cox said he would be there, but he did not appear the next day, December 23.

[11] Later on December 23, the State filed a petition to revoke Cox's probation in both cases, alleging he had failed to appear at the Mission for the Life Change Program. On December 27, 2021, the trial court presided over an evidentiary

hearing, at which the court determined Cox had violated the terms and conditions of his probation. The court revoked Cox's probation and ordered him to serve his previously-suspended sentences in their entirety, for a total executed sentence of seven years, minus credit for time served. This appeal followed.

## Discussion and Decision

### I. Violation of Terms and Conditions of Probation

[12] Cox argues the trial court should not have revoked his probation because his failure to attend the Life Change Program was unintentional. 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 has broad discretion in imposing conditions of probation in order to create law abiding citizens and to protect the community, with the only limitations being that the conditions must have a reasonable relationship to the treatment of the accused and the protection of the public. *Hurst v. State*, 717 N.E.2d 883, 886 (Ind. Ct. App. 1999).

[13] A trial court may revoke a person's probation if "the person has violated a condition of probation during the probationary period." Ind. Code § 35-38-2-3 (2015). The State must prove by a preponderance of the evidence that a defendant has violated a term or condition of probation. *Id.* When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if

“there is substantial evidence of probative value to support the trial court’s conclusion that a probationer has violated any condition of probation.”

*Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014) (quoting *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995)).

[14] There is no dispute that Cox tested positive for the COVID virus shortly before his release from jail. Cox argues that his health deteriorated after he saw McKinney at the video rental kiosk, and he was essentially bedridden for almost a month, which he claims is the reason why he was unable to report. Cox’s sole evidentiary support for this argument is his own self-serving testimony, which the trial court, as the finder of fact, was free to disregard. He indisputably failed to appear at the Mission for the Life Change Program, and he never contacted either McKinney or his probation officer to explain his absence or to request guidance.

[15] Cox further claims his probation agreement did not explain precisely when he was supposed to arrive at the Life Change Program, and he should have been given the benefit of the doubt as to when he was expected to report. The record provides otherwise. Cox’s probation officer testified that she understood that he was to report to the Mission immediately after his release from jail on December 22. Similarly, McKinney explained that Cox should have reported to the Mission on December 22. Based on this evidence, the trial court could have reasonably concluded that Cox was aware that he needed to report to the Mission immediately after his release from jail. The trial court did not err in revoking Cox’s probation due to his failure to appear.

## II. Sanction

[16] Cox claims the trial court should not have ordered him to serve his previously-suspended sentences as a sanction for failing to attend the Life Change Program. If a trial court determines that a person has violated a term or condition of probation within the probationary period, the court may impose one 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.

Ind. Code § 35-38-2-3(h).

[17] We review a trial court's selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.* We consider only the evidence most favorable to the judgment without reweighing that evidence or reassessing the credibility of the witnesses. *Cain v. State*, 30 N.E.3d 728, 732 (Ind. Ct. App. 2015), *trans. denied*.

[18] Cox had agreed that, in exchange for being allowed to serve his sentences on probation, if he violated any of the terms and conditions of his probation, he would serve his suspended sentences in full. Appellant's App. Vol. 2, p. 48. It is too late for him to alter the bargain to which he had agreed.

[19] In any event, Cox's blatant failure to report to the Mission, or to reach out to his probation officer or McKinney to explain his absence, demonstrates an unwillingness to comply with the conditions of probation. When his unwillingness is considered along with his prior noncompliance in the RISC court program, and his commission of the offense in FB-22 while he was on probation, one can reasonably conclude the trial court acted well within its discretion by ordering him to serve his previously-suspended sentences.

## Conclusion

[20] For the reasons stated above, we affirm the judgment of the trial court.

[21] Affirmed.

Vaidik, J., and Brown, J., concur.