

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy J. Stewart,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 19, 2021

Court of Appeals Case No.
20A-CR-2115

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-1808-F6-4649

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Jeremy J. Stewart (Stewart), appeals the trial court's revocation of his probation and imposition of his previously-suspended sentence.
- [2] We affirm.

ISSUE

- [3] Stewart presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion when it imposed his previously suspended sentence after he admitted to having violated his probation.

FACTS AND PROCEDURAL HISTORY

- [4] On August 22, 2018, the State filed an Information, charging Stewart with auto theft, a Level 6 felony; conversion, a Class A misdemeanor; and operating a motor vehicle without a license, a Class C misdemeanor. On January 31, 2020, Stewart entered into a guilty plea with the State, in which he agreed to plead guilty to auto theft, a Level 6 felony, in exchange for the State's agreement to dismiss the remaining Counts. On March 2, 2020, the trial court accepted the plea agreement, dismissed the other Counts, and sentenced Stewart to 912 days, with 664 days suspended to probation.
- [5] While on probation and in violation of the standard terms of his probation agreement, on June 16 and July 4, 2020, Stewart consumed alcohol and methamphetamine. On June 20, June 25, and July 9, 2020, Stewart tested

positive for methamphetamine. On June 26 and July 7, 2020, Stewart failed his drug screens after testing positive for morphine. In addition to alcohol, methamphetamine, and morphine use, Stewart also failed to report to community corrections as ordered on July 16, 2020. On July 22, 2020, the State filed a petition to revoke Stewart's probation. On October 19, 2020, the trial court conducted a hearing on the State's petition. During the hearing, Stewart admitted to having violated his probation by using alcohol, methamphetamine, and morphine, and by failing to report to community corrections as directed. The trial court accepted Stewart's admission and, upon the presentation of evidence, noted that:

at the time of sentencing [of the auto theft] [his] aggravated circumstances included prior criminal history. He has 12 convictions, he has been on probation eight times, he's had five petitions to revoke filed, this will be six. He was terminated at least twice. He's had opportunities for treatment previously in the past that has not been successful nor was it this time. At the time he had an outstanding warrant from Wisconsin, which is now taken care of, [] he did not contact probation upon return, they had to find him. He's had multiple contacts with law enforcement. . . .

[I] find that he has excuse upon excuse; he's using controlled substances; he flees from probation; can't make a phone call but he has his family members apparently do all his work for him; nothing what he states actually makes sense.

The [c]ourt finds that it is all excuses, there is an opportunity for jail treatment program in the jail. That's voluntary so if you actually want to do it, then it's there, but I do not find that probation is going to be an appropriate placement for you given

your response to them; them chasing you; you fleeing basically and not completing on prior occasions and having opportunities.

(Transcript pp. 21-22). At the close of the hearing, the trial court ordered Stewart to serve the remainder of his previously-suspended sentence.

[6] Stewart now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[7] “Probation is a matter of grace left to the trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Pursuant to Indiana Code section 35-38-2-3, the trial court determines the conditions of probation and if the conditions are violated, the trial court may revoke probation. *Id.* Once a trial court has exercised its grace by ordering probation rather than incarceration, the trial court should have considerable leeway in deciding how to proceed. *Id.* Without this discretion, trial courts would be less inclined to award probation to future defendants. *Id.* Therefore, a trial court’s sentencing decision for probation violations are reviewed for an abuse of discretion. *Id.* “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

[8] In accordance with Indiana Code section 35-38-2-3(h), upon a finding that a defendant has violated the condition of probation, the trial court may impose one or more of the following sanctions: (1) continue the defendant on probation, with or without modifying or enlarging the conditions; (2) extend the

defendant's probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

[9] Here, the trial court ordered Stewart to serve his entire previously-suspended sentence. Stewart contends that the trial court abused its discretion because it disregarded his testimony that he had been clean since his failed drug screens and had set up an interview to enter a drug treatment program the day following the hearing on the State's petition to revoke his probation. He also attributed his delayed reporting to community corrections to his extradition proceeding to Wisconsin and his problems in returning to Indiana upon closing the Wisconsin case.

[10] The record reflects that the trial court did not find Stewart's testimony to be credible. The trial court concluded that Stewart made "excuse upon excuse" and nothing he stated "actually ma[d]e sense." (Tr. p. 22). Based on Stewart's criminal history at the time of sentencing for the underlying offense, Stewart had been on probation eight times prior, with five petitions to revoke. He has received opportunities for treatment previously in the past, which have not been successful. In the instant case, Stewart's probation was revoked after failing five drug screens and failing to report to community corrections. Accordingly, based on the evidence before us, we cannot conclude that the trial court abused its discretion by ordering him to serve the remaining balance of his suspended sentence.

CONCLUSION

- [11] Based on the foregoing, we hold that the trial court did not abuse its discretion by ordering Stewart to serve the entirety of his previously-suspended sentence.
- [12] We affirm.
- [13] Mathias, J. and Crone, J. concur