

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT
Matthew D. Anglemeyer
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE
Theodore E. Rokita
Attorney General of Indiana
Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Phil J. Reeves,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 28, 2023

Court of Appeals Case No.
22A-CR-2485

Appeal from the Marion Superior
Court

The Honorable James Osborn,
Judge

Trial Court Cause No.
49D21-2201-F5-2901

Memorandum Decision by Judge Kenworthy
Judge Crone and Senior Judge Robb concur.

Kenworthy, Judge.

Case Summary

[1] The State charged Reeves with domestic battery as a Level 5 felony,¹ domestic battery as a Level 6 felony,² and resisting law enforcement using a vehicle as a Level 6 felony.³ Reeves pleaded guilty in an open plea, and the trial court accepted the plea. As part of Reeves' sentence, the trial court ordered him to complete a batterer's intervention program ("BIP") and pay a \$200 alcohol and drug countermeasures fee. Reeves raises two issues for our review. First, Reeves asserts—and the State does not dispute—the trial court erred by imposing the \$200 countermeasures fee. Second, Reeves argues the trial court abused its discretion by ordering Reeves to attend a BIP because the court was under the mistaken belief it was obligated to do so.

[2] As to the first issue, we agree with Reeves and reverse and remand for the trial court to vacate its imposition of the \$200 countermeasures fee. And as to Reeves' participation in a BIP, because we conclude the trial court would have ordered Reeves to attend a BIP regardless of any statutory obligation to do so, we conclude Reeves has identified only harmless error.

¹ Ind. Code § 35-42-2-1.3(a)(1), (c)(4) (2021).

² I.C. § 35-42-2-1.3(a)(1), (b)(2) (2021).

³ I.C. § 35-44.1-3-1(a)(3), (c)(1)(A) (2021).

Facts and Procedural History

- [3] In January 2022, police officers went to a home to investigate a reported domestic disturbance. An officer saw Reeves drive past him in a vehicle “at a high rate of speed” down the driveway and onto the road. *Tr. Vol. 2* at 41. Reeves’ girlfriend—who had dated Reeves off and on for nine years—was at the home and identified Reeves as “the person who had put hands on her[.]” *Id.* The officer got into his patrol vehicle and followed Reeves with lights and sirens, but Reeves did not pull over. The officer lost sight of Reeves. When the officer went back to the home to investigate the domestic disturbance report, Reeves’ girlfriend told the officer Reeves had twice pushed her up against the wall and grabbed her face. Reeves’ fifteen-year-old daughter was present and saw the altercations.
- [4] Around 2:00 a.m. the following morning, officers responded to a domestic disturbance report at the same home. The officers searched the house but could not find Reeves. The officers eventually found Reeves in the garage and arrested him.
- [5] The State charged Reeves with domestic battery as a Level 5 felony, domestic battery as a Level 6 felony, and resisting law enforcement using a vehicle as a Level 6 felony. Reeves pleaded guilty to the charges in an open plea and admitted to a probation violation in a separate cause. Before accepting Reeves’ plea, the trial court advised him:

THE COURT: Do you understand that this Court is required to, among other things, sentence you to 26 weeks of some kind of Batterer's Intervention Program or Domestic Violence Program? Uh, where you go to counseling for 26 weeks. Do you understand that?

DEFENDANT: Yes, Sir.

THE COURT: Okay. Do you understand that I have to assess a \$200.00 Counter Measure fee as part of the sentence if you are to be found guilty in this case on these counts?

DEFENDANT: Yes, Sir.

Tr. Vol. 2 at 38.

[6] At sentencing, Reeves' girlfriend testified Reeves had planted a tracking device on her vehicle at least twice. The police officers found another tracking device hidden underneath her vehicle during their investigation of the reported disturbances. Reeves' girlfriend described how Reeves' abuse affected her life. Reeves' daughter also testified and asked, "[H]ow can he put his hands on a woman when he has a daughter of his own[?]" *Id.* at 61. Reeves' daughter asked the trial court to leave in place a no-contact order prohibiting Reeves from contacting her. The State requested the trial court order Reeves to attend a BIP as a condition of probation.

[7] The trial court asked Reeves if he understood the significance of his daughter's question and discussed the impact Reeves' abuse of his girlfriend will have on

his daughter's future. *Id.* at 73, 79. Reeves said he understood. The trial court noted Reeves' "significant," "long," and "violent" criminal history, stating his actions show a "lack of respect for other human beings, and an unwillingness apparently to recognize that other people should . . . not be physically harmed . . . by you." *Id.* at 73–74. And the trial court said, "[I]f I were in [your girlfriend's] shoes, if I were in your daughter's shoes, I would consider you to be a physical risk." *Id.* at 75.

[8] The trial court sentenced Reeves to an aggregate term of four years with two years suspended to probation, stating, "[A]s to the domestic battery sentence, frankly, I would have given you more than what the State requested, . . . and that's even understanding that you have entered . . . this [plea] without any kind of agreement with the State." *Id.* at 77. The trial court revoked Reeves' probation in the separate cause and ordered him to serve two years of his previously suspended sentence in the Indiana Department of Correction consecutive to the present sentence. The court also ordered substance abuse evaluation and treatment, alcohol abuse evaluation and treatment, mental health counseling, and 120 hours of community service.

[9] The next day, the trial court held a hearing to clarify the sentencing order. Among other things, the trial court addressed the State's request for Reeves to attend a BIP. The court stated, "That's required statutorily and I'm going to grant that . . . request. So, you'll have a 26[-]week batterer's intervention

program or domestic violence counseling as part of your sentence in that case.”⁴

Id. at 85. The trial court added Reeves would “be assessed a \$200 countermeasure fee[.]” *Id.*

[10] Reeves now appeals.

Discussion and Decision

[11] “Generally, sentencing determinations are within the trial court’s discretion.” *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). Thus, we review sentencing determinations for an abuse of discretion, which occurs if the trial court’s decision is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clar’d on reh’g* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). The trial court also abuses its discretion if it “misinterprets or misapplies the law.” *Gil v. State*, 988 N.E.2d 1231, 1234 (Ind. Ct. App. 2013) (quoting *Bennett v. State*, 862 N.E.2d 1281, 1286 (Ind. Ct. App. 2007)). “If the fees imposed by the trial court fall within the parameters provided by statute, we will not find an abuse of discretion.” *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011).

⁴ The trial court’s Abstract of Judgment cites Indiana Code Section 35-50-9-1, which permits the court to order a person convicted of domestic battery to complete a BIP, as support for its comment, “Def shall complete 26 weeks of Domestic Violence or Batterer’s [sic] Intervention Programs.” *Appellant’s App.* at 17. Thus, it is apparent the trial court uses both “batterer’s intervention program” and “domestic violence counseling” to refer to a BIP. *Tr. Vol. 2* at 85.

1. Alcohol and Drug Countermeasures Fee

[12] According to Indiana Code Section 33-37-4-1(a) (2018), “the clerk shall collect from the defendant . . . [a]n alcohol and drug countermeasures fee” in limited circumstances.⁵ Here, Reeves asserts—and the State does not dispute—the trial court was without statutory basis to impose the \$200 alcohol and drug countermeasures fee. We agree with Reeves. *See, e.g., Sears v. State*, 194 N.E.3d 1173, 1175 (Ind. Ct. App. 2022) (holding the trial court erred in imposing an alcohol and drug countermeasures fee where the defendant was convicted of theft). We therefore remand to the trial court to vacate the imposition of the fee.

2. Batterer’s Intervention Program

[13] Indiana Code Section 35-50-9-1(a) (2011) provides: “At the time of sentencing for a person convicted of domestic battery under IC 35-42-2-1.3 or a crime that involved domestic abuse, neglect, or violence, the court *may* require the person to complete a batterer’s intervention program approved by the court.” (Emphasis added.) Because the legislature used the word “may” instead of

⁵ Indiana Code Section 33-37-4-1(b)(6) states the clerk shall collect an alcohol and drug countermeasures fee if the fee is required under Indiana Code Section 33-37-5-10. That Section instructs the clerk to collect the alcohol and drug countermeasures fee in each action where a person is found to have committed an offense or infraction under Indiana Code Chapter 9-30-5 and the person’s driving privileges are suspended because of the finding. I.C. § 33-37-5-10. Indiana Code Section 33-37-5-10 also instructs the clerk to impose the countermeasures fee where a person is charged with an offense under Indiana Code Chapter 9-30-5, agrees to plead guilty to an offense not listed in that chapter of the Indiana Code, and agrees to pay the countermeasures fee as part of the plea agreement. Indiana Code Chapter 9-30-5 relates to offenses involving operating a vehicle while intoxicated. Reeves was not charged with or convicted of an offense under Indiana Code Chapter 9-30-5.

“shall,” trial courts have discretion to order a person convicted of domestic battery to complete a BIP. Reeves claims—and “[t]he State does not argue to the contrary”—the trial court mistakenly believed it was required to order Reeves to complete a BIP. *Appellee’s Br.* at 11. Indeed, the trial court twice stated it was “required” to impose a BIP as part of Reeves’ sentencing.

[14] Reeves argues because the trial court misunderstood the law, it abused its discretion. And Reeves argues the erroneously ordered BIP is not harmless because the program is “time-intensive and lengthy,” and had the court known it had other options, it may have chosen a different program. *Appellant’s Reply Br.* at 4. In general, “[n]o error or defect in any ruling or order . . . by the trial court . . . is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” Ind. Appellate Rule 66(A). When this Court encounters sentencing irregularity, we need not remand for resentencing if we can “say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Anglemyer*, 868 N.E.2d at 491.

[15] The trial court pondered the effect of Reeves’ abuse on his family and sought to clarify for Reeves the significance of his daughter’s testimony. The trial court considered Reeves a “physical risk” to his girlfriend and his daughter, *Tr. Vol. 2* at 75, noting Reeves’ criminal history of violence against others and “lack of respect for other human beings, and an unwillingness . . . to recognize that other people should . . . not be physically harmed[,]” *id.* at 74. When

sentencing Reeves for his domestic battery conviction, the trial court said it “would have given [Reeves] more than what the State requested[.]” *Id.* at 77. The trial court ordered probation as part of Reeves’ sentence. Indiana Code Section 35-38-2-2.3(a)(4) (2018) permits the court to require a person to participate in a rehabilitative service as a condition of probation. BIP is a rehabilitative service.

[16] Based on the trial court’s thoughtful discussion of Reeves’ unremedied issues with domestic violence and its inclination to impose a sentence beyond what the State requested (which included a request for a BIP), we can say with confidence the trial court would have ordered Reeves to complete a BIP even if it had understood the matter was left to the court’s discretion. The trial court’s statements focused on preventing Reeves’ violence toward his girlfriend, and a BIP would require Reeves to address that violence. At bottom, Reeves has not identified reversible error. *See* App. R. 66(C); *cf. McCarty v. State*, 94 N.E.3d 350, 355 (Ind. Ct. App. 2018) (affirming the trial court’s order for defendant to complete a drug and alcohol evaluation as a condition of probation where the offenses did not involve alcohol or drugs “[b]ecause there is evidence in the record that [defendant] was recently convicted of an alcohol-related offense,” and “ordering him to complete a drug and alcohol evaluation is reasonably related to his rehabilitation”).

Conclusion

- [17] Reeves has failed to identify reversible error in the imposition of a BIP as part of his sentence. But there was no statutory basis to impose the \$200 alcohol and drug countermeasures fee.
- [18] Affirmed in part, reversed and remanded in part.

Crone, J., and Robb, Sr. J., concur.