

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Andrea Armour,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

April 18, 2023

Court of Appeals Case No.  
22A-CR-2407

Appeal from the Hendricks Circuit  
Court

The Honorable Dan Zielinski,  
Judge.

Trial Court Cause No.  
32C01-1808-F3-30

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

[1] Andrea Armour appeals the revocation of her probation. She argues the trial court abused its discretion when it found Armour violated her probation. We affirm.

## Facts and Procedural History<sup>1</sup>

[2] On August 27, 2018, the State charged Armour with Level 3 felony dealing in methamphetamine,<sup>2</sup> Level 5 felony possession of methamphetamine,<sup>3</sup> Level 6 felony battery against a public safety officer,<sup>4</sup> Level 6 felony possession of a narcotic drug,<sup>5</sup> Level 6 felony possession or use of a legend drug,<sup>6</sup> Level 6 felony possession of a syringe adapted for the use of a controlled substance or legend drug with intent to commit an offense,<sup>7</sup> Class A misdemeanor intimidation,<sup>8</sup> Class A misdemeanor resisting law enforcement,<sup>9</sup> Class B

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<sup>1</sup> In her appendix, Armour tendered a copy of the public MyCase record in lieu of the certified Chronological Case Summary. Pursuant to Indiana Appellate Rule 50(2)(a), the appendix must include the “Clerk’s Record, including the chronological case summary[.]” The public MyCase record is not part of the Clerk’s Record and we admonish counsel to tender the Chronological Case Summary in accordance with the Indiana Appellate Rules in the future.

<sup>2</sup> Ind. Code § 35-48-4-1.1(d)(1).

<sup>3</sup> Ind. Code § 35-48-4-6.1(b)(1).

<sup>4</sup> Ind. Code § 35-42-2-1(e)(2).

<sup>5</sup> Ind. Code § 35-48-4-6(a).

<sup>6</sup> Ind. Code § 16-42-19-27(a).

<sup>7</sup> Ind. Code § 16-42-19-18(b).

<sup>8</sup> Ind. Code § 35-45-2-1(a)(2).

<sup>9</sup> Ind. Code § 35-44.1-3-1(a)(1).

misdemeanor possession of marijuana,<sup>10</sup> and Class A misdemeanor possession of paraphernalia.<sup>11</sup> On March 7, 2019, Armour pled guilty to Level 5 felony possession of methamphetamine, Level 6 felony battery against a public safety officer, Class A misdemeanor intimidation, and Class A misdemeanor resisting law enforcement. In exchange, the State dismissed the remaining six charges against Armour.

[3] On March 11, 2019, the trial court held a sentencing hearing. The trial court ordered Armour to serve concurrent sentences of 1095 days with 915 suspended and 180 days credit for time served for Level 5 felony possession of methamphetamine; 365 days with 305 days suspended for Level 6 felony battery against a public safety officer; 365 days, all suspended except for time served, for Class A misdemeanor intimidation; and 180 days for Class A misdemeanor resisting law enforcement. Thus, as of sentencing, Armour's remaining aggregate sentence was 915 days suspended to probation. The conditions of Armour's probation required her to, among other things, submit a letter of apology to one of her victims; cooperate with and report to her probation officer as required; refrain from criminal activity; submit drug screens as directed; participate in a substance abuse program; and attend anger management treatment.

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<sup>10</sup> Ind. Code § 35-48-4-11(a)(1).

<sup>11</sup> Ind. Code § 35-48-4-8.3(b)(1).

[4] On July 22, 2019, the State charged Armour with Level 6 felony possession of methamphetamine.<sup>12</sup> On July 24, 2019, the probation department filed a notice of probation violation based on the new criminal charge. On November 7, 2019, the trial court found Armour violated her probation by committing Level 6 felony possession of methamphetamine. The trial court ordered Armour to execute twenty-four days in jail.<sup>13</sup>

[5] On February 10, 2021, the probation department filed a notice of probation violation alleging Armour failed to report to probation as directed, failed to make an effort to pay probation fees, did not participate in a substance abuse program as directed, did not participate in an anger management program as directed, and did not submit a letter of apology to one of her victims. Probation Officer Melody Spears alleged in a probable cause affidavit:

Ms. Armour failed to report as directed in the month of August. She reported in September and October, but was asked to provide documentation from her doctor regarding some of her health issues preventing her from reporting and she failed to provide anything. This officer requested email updates and doctors [sic] notes in November and December 2020 and January 2021 and she has failed to respond or provide anything. This officer attempted to call her on the telephone and was unable to get through or leave a voicemail.

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<sup>12</sup> Ind. Code § 35-48-4-6.1(a).

<sup>13</sup> The disposition of the new criminal case is not clear from the record.

(App. Vol. II at 91.) On April 28, 2021, the probation department amended its notice of probation violation and alleged Armour failed to submit drug screens as required. Probation Officer Jessica Ridge alleged in a probable cause affidavit that not only had Armour not submitted drug screens on April 6, 2021, and April 27, 2021, she had also “failed to submit 16 drug screens, prior to this Officer taking over supervision in March 2021.” (*Id.* at 94.) On May 13, 2021, following a hearing, the trial court found Armour violated her probation and ordered her to serve 915 days in work release. The trial court indicated in its order, “May be released to hospital for treatment. May reconsider (indiscernible) on proof of illness.” (*Id.* at 96.) Armour subsequently provided the trial court with her medical records.

[6] On June 3, 2021, Armour filed an unopposed motion for modification of sentence placement. She asked the trial court to allow her to serve the remainder of her sentence in home detention because she had “many health conditions, including congestive heart failure requiring a surgically implanted defibrillator.” (*Id.* at 99.) The trial court granted her motion the same day and ordered Armour to serve the remainder of her sentence on home detention.

[7] On December 3, 2021, Armour tested positive for methamphetamine. On December 8, 2021, the probation department filed a notice of probation violation alleging Armour failed to submit samples for two drug screens and had not made an effort to pay her fees. On December 17, 2021, the probation department filed a notice of probation violation alleging Armour tested positive for methamphetamine on December 3, 2021. On January 21, 2022, the

probation department filed a notice of home detention violation alleging Armour twice submitted a diluted urine sample as part of her required drug screens. On March 1, 2022, the probation department filed a notice of home detention violation alleging Armour did not submit a sample for a drug screen as directed on February 28, 2022. Home Detention Officer McKinzee Terry stated in the probable cause affidavit:

Ms. Armour called the drug hotline at approximately 1:04 pm. At 10:19 pm, this Officer received an alert advising Ms. Armour left her house. Upon reviewing her points, she was located at IU West Hospital. This Officer would note, Ms. Armour has been called to submit drug screens on three previous occasions, each time checking herself into a hospital without providing documentation in a timely manner. At this time, Ms. Armour has not contacted the Probation Department on [sic] why she is currently in the Hospital. This Officer attempted to make contact with Ms. Armour on 3/1/22 but was unsuccessful.

(*Id.* at 115.)

[8] On March 1, 2022, the trial court issued an arrest warrant for Armour. On March 7, 2022, the trial court recalled the arrest warrant after Armour provided documentation indicating she was hospitalized on February 28, 2022, and that she was hospitalized when the trial court made its order. On June 16, 2022, the trial court considered the petitions filed between December 2021 and March 2022, and ordered Armour to notify Officer Terry “w/i 24 hours of scheduling a doctor apt, and w/i 24 hrs of release from any unscheduled apt.” (*Id.* at 199)

(errors in original). The trial court did not revoke Armour's home detention at that time.

[9] On August 18, 2022, the probation department filed a notice of probation violation. Probation Officer Terry alleged, in relevant part:

1. Ms. Armour was scheduled to submit a drug screen on 8/17/22. She failed to report for this drug screen.

On 8/16/22, a home visit was conducted at Ms. Armour's residence. As Officers approached her home, her garage door was open. Ms. Armour could hear Officers approaching and very quickly came out of the garage and stated she was just working with her "coin collection". Ms. Armour's body language appeared to be extremely nervous and fidgety. Officer Minardo asked Ms. Armour to see her "coin collection" that she was working on, and she was extremely hesitant to allow Officers to follow her back into her garage. Based on this interaction with Ms. Armour, this Officer manually scheduled her to submit a drug screen on 8/17/22.

The Officer would note that Ms. Armour contacted the drug testing hotline at 9:41 a.m. on 8/17/22 and was fully aware that she was ordered to submit a drug screen.

2. Ms. Armour is currently on Home Detention and was not permitted to leave her home on 8/17/22. At 2:34 p.m., Ms. Armour left her residence without permission and traveled to St. Francis Hospital located at 8111 S Emerson Ave., Indianapolis, IN 46237. This Officer would note that Ms. Armour's residence is over 40 minutes away from this hospital. She did not arrive at the hospital until 4:12 p.m.

Ms. Armour failed to contact this Officer about any medical emergency until 5:49 a.m. on 8/18/22. She reported that, “I’m blood pressure crashed and I passed out and I hit my head on the dresser I’ve been here since early afternoon”. This Officer would note that this is the 5th occasion in which she has been scheduled for a drug screen and then subsequently has a medical emergency the same day, right after calling the hotline and realizing she is ordered to test.

(*Id.* at 121) (errors in original). On August 18, 2022, the trial court issued a warrant for Armour’s arrest based on the allegations set forth in the August 18, 2022, notice of home detention violation. On August 26, 2022, the probation department filed a notice of home detention violation. Probation Officer Terry alleged:

1. On or about 8/23/22, this Officer received a Tracker Missed Callback alert at 10:55 pm. This Officer investigated further and realized that Ms. Armour had not charged her equipment since 8/22/22 at 3:38 pm, causing her device to lose power. This Officer knew where Ms. Armour’s whereabouts were but she was made aware that hospital staff must send documentation every day so this Officer would know her whereabouts. She was also advised multiple times that once released she needed to charge her equipment. At 8:49 am on 8/26/22 this Officer received the following text stating, “okay they ended up releasing me late last night it was pretty late I don’t know six seven I’m not quite sure and I had to wait for a ride and when I got home the battery was still dead so I had to let it put it on charge and I just fell asleep but I’m letting you know now I’m on my way to the jail to turn myself in this morning I’m heading there now for the warrant.” This Officer attempted to contact Ms. Armour multiple times on 8/26/22 but was unsuccessful as her phone went straight to voicemail each time. At this time, her current whereabouts are unknown.



(*Id.* at 124) (errors in original). Probation Officer Terry testified she learned of Armour’s whereabouts when “the jail tracker uh booked her in on um August 26th at 9:06 a.m.” (Tr. Vol. II at 21.)

[10] On September 12, 2022, the trial court held an evidentiary hearing on the pending notices of home detention violations. Probation Officer Terry testified she had been Armour’s probation officer since August 30, 2021. She recounted the incidents included in the probable cause affidavits, specifically the home visit on August 16, 2022, during which Armour indicated she was working with her coin collection in the garage; Armour’s failure to submit to drug screens as required; and Armour’s failure to properly charge her ankle bracelet, leaving her whereabouts unknown for a period of time. Probation Officer Terry also told the court, regarding the proximity in time between Armour’s discovery of a random drug screen and her admission to the hospital:

[State]: Ms. Terry, is this [August 17, 2022] the first time that uh Ms. Armour has missed a drug screen because of a medical emergency?

[Terry]: No, it’s not.

[State]: Okay. Approximately how many times has she missed a drug screen, because of a claim to medical emergency?

[Terry]: Um, I counted uh roughly five times.

[State]: Okay.

[Terry]: And I (INAUDIBLE) as a violation also too.

[State]: So, these are times that she's been ordered to, she called into the drug line and been ordered to take the test, is that correct?

[Terry]: Yes.

[State]: And then does not take a test, because she had to go to the hospital for a medical emergency?

[Terry]: Yes.

(*Id.* at 21-2.) After hearing testimony from Probation Officer Terry and Armour and receiving evidence, the trial court revoked Armour's probation and stated:

Looking at the [Chronological Case Summary], um she's done nothing but violate for the past two years. She violated Pretrial Release. She violated Probation at least three times, and I think she's had more than one or two Home Detention Violations, and every time um she asked me to do something lenient, I did, every single time, except for this last time uh two weeks ago, or whatever it was that she wanted to be released from jail. I said, no, too much is too much. So there's, she violated a Home Detention by failing to report for numerous drug screens, leaving her home without permission, uh fail to maintain equipment, she made no effort towards her financial obligations. She agreed at her Plea, she agreed to serve 1,095 days in the Department of Corrections, [sic] and I agreed to suspend 915 days, that time on probation, but, again, she has just violated everything. I uh have no choice here but to send her to DOC for 1,095 days, 0 days suspended.

(*Id.* at 34.) After a discussion regarding credit time, the trial court ordered Armour to execute 159<sup>14</sup> days in the Department of Correction (“DOC”).

## Discussion and Decision

[11] Armour contends the trial court abused its discretion when it found she violated her probation. “Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his [or her] behavior in lieu of imprisonment.” *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). It “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 discretion to set the conditions of probation and “to revoke probation if the conditions are violated.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Revocation of probation is a two-step process. *Id.* The court must first determine whether a violation occurred. *Id.* If the trial court finds the defendant violated the conditions of probation, the trial court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h).

[12] When a defendant appeals from a trial court’s determination of violation and sanction, we review the court’s decision for an abuse of discretion. *Heaton*, 984

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<sup>14</sup> 915 days minus 756 days credit.

N.E.2d at 616. “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.* (internal citation omitted). When reviewing the sufficiency of the evidence presented to support the finding of a probation violation, we look to the evidence most favorable to the judgment, and we neither reweigh the evidence nor reassess the credibility of the witnesses. *Votra v. State*, 121 N.E.3d 1108, 1113 (Ind. Ct. App. 2019).

[13] Armour admits she failed to comply with the terms of her probation, but she asserts the trial court abused its discretion by determining she violated her probation because it did not consider her good faith effort to comply with the terms of her probation despite her health conditions. She relies on *Woods v. State*, 892 N.E.2d 637 (Ind. 2008), and *Ripps v. State*, 968 N.E.2d 323 (Ind. Ct. App. 2012). Neither applies here.

[14] In *Woods*, our Indiana Supreme Court, in dicta, presented hypotheticals – such as a probationer being in a coma or on medication that affected urinalysis results – as circumstances a court may consider when deciding to revoke a person’s probation because those medical conditions indicate a possible lack of volition to commit a probation violation and could give weight to a probationer’s argument that he acted in good faith when trying to comply with the terms of his probation. 892 N.E.2d at 641. To that point, our Indiana Supreme Court noted “[w]hile good faith and lack of willfulness does not preclude finding a probation violation, defendant could and did raise his alleged good faith before the court as a factor for the court to consider in deciding to

revoke probation.’’ *Id.* (quoting *United States v. Warner*, 830 F.2d 651, 657-8 (7th Cir. 1987)). In *Ripps*, which relied on *Woods*, our court reversed the revocation of Ripps’s probation based on the totality of the circumstances, specifically:

Ripps was sixty-nine years old and suffering from serious health issues, including terminal cancer; he was attempting to adhere to his probation conditions, as evidenced by his going to the sheriff’s office to register his new address; although he was initially in violation of the residency restriction, evidence reveals he was taking steps to correct the violation by finding a new residence; while he did live within 1,000 feet of the public library, this was only so by about twenty feet and some ambiguity exists in how this distance was measured; and, last, Ripps previously served time in prison for a crime that was later vacated as violative of our constitutional ex post facto provision.

968 N.E.2d at 328.

[15] Such is not the case here. Like Ripps, Armour suffers from several serious health conditions. Armour testified she has “heart and kidney issues” and her “heart function is less than 15%.” (Tr. Vol. II at 26.) She further told the trial court that she has “serious blood pressure issues, kidney issues, and [her] organs are starting to fail due to lack of oxygen and blood getting into [her] heart.” (*Id.*) However, unlike Ripps, Armour has violated her probation multiple times for a myriad of reasons. Probation Officer Terry’s testimony illustrated Armour’s attempts to circumvent her probation requirements by consistently claiming illness after learning she was required to submit a random drug screen. In addition, Armour’s whereabouts were unknown on more than one occasion

because she either did not report her location to Officer Terry or had not charged the battery on her ankle bracelet. Armour's argument that her health conditions should somehow have allowed her to escape the trial court finding her in violation of her probation is an invitation for this court to reweigh the evidence or judge the credibility of witnesses, which we cannot do. *See Votra*, 121 N.E.3d at 1113 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, we conclude the trial court did not abuse its discretion when it found Armour violated her probation.

## Conclusion

[16] The trial court did not abuse its discretion when it found Armour violated her probation. Accordingly, we affirm.

[17] Affirmed.

Mathias, J., and Bradford, J., concur.