

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Nicole A. Reyes,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

August 16, 2023

Court of Appeals Case No.  
23A-CR-509

Appeal from the Noble Circuit  
Court

The Honorable Michael J. Kramer,  
Judge

Trial Court Cause No.  
57C01-1909-F4-8

**Memorandum Decision by Judge Mathias**  
Judges Vaidik and Pyle concur.

## **Mathias, Judge.**

- [1] Nicole A. Reyes appeals the trial court's order that she serve her previously suspended sentence in the Department of Correction following her admission to several violations of the conditions of her probation. Reyes raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered her to serve her previously suspended sentence. We affirm.

### **Facts and Procedural History**

- [2] On May 4, 2020, Reyes pleaded guilty to one count of Level 4 felony burglary, three counts of Level 6 felony battery against a public safety official, one count of Level 6 felony domestic battery, and one count of Class B misdemeanor battery. In exchange, the State dismissed two other pending counts and agreed to recommend to the trial court a maximum sentence of four years executed, with any other sentencing left open to the court's discretion.
- [3] The trial court accepted Reyes's plea agreement and entered judgment of conviction against her. Following a sentencing hearing, the court ordered Reyes to serve four years in the Department of Correction, with the first two years executed and the final two years suspended to probation.
- [4] Reyes began serving her term of probation in March 2021. In October 2022, the State filed a notice of probation violation. In that notice, the State alleged that Reyes had committed eight violations of the conditions of her probation, including failing to meet with her probation officer, failing to be truthful with her probation officer, failing to follow the law, failing to abstain from controlled

substances, and failing to obtain employment. At an ensuing probation-violation hearing, Reyes admitted that she had violated the conditions of her probation by not meeting with her probation officer as required, by using marijuana, and by not obtaining full-time employment.

[5] Following her admissions, Reyes asked the court to reinstate her to probation because she had “a 10 month old at home and I am currently pregnant.” Tr. Vol. 2, p. 20. But the State, relying on the testimony of Reyes’s probation officer, recommended that the court order Reyes to serve her previously suspended sentence in the Department of Correction. According to the State, Reyes had “continually . . . misled the probation department” regarding her whereabouts and inability to drive; she had repeated contacts with law enforcement that went unreported to her probation officer; she had failed to obtain employment and a driver’s license; and she used marijuana. *Id.* at 22. At the conclusion of the hearing, the court found that, “if I were to put you back on probation . . . , I can’t find any reason to believe that things would be any different . . . .” *Id.* at 23. The court then revoked Reyes’s previously suspended sentence and ordered her to serve that time executed with the Department of Correction.

[6] This appeal ensued.

## Discussion and Decision

- [7] Reyes appeals the trial court's order that she serve her previously suspended sentence executed with the Department of Correction. As our Supreme Court has made clear:

“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). It is within the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated. *Id.* In appeals from trial court probation violation determinations and sanctions, we review for 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.*, or when the trial court misinterprets the law, see *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008) . . . .

*Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Further:

A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *Id.* If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Id.*

*Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012).

- [8] The trial court acted within its discretion when it ordered Reyes to serve her previously suspended sentence. Reyes admitted to multiple probation

violations, namely, drug use, not meeting with her probation officer, and not obtaining full-time employment. Reyes's violations were repeated throughout her term of probation and ongoing at the time of the revocation hearing. As the State accurately summarizes, "it was not unreasonable for the trial court to conclude that Reyes would not respect the obligations of probation and that she would benefit from a more secure environment in which to reform her behavior." Appellee's Br. at 7.

[9] Still, Reyes contends that the trial court abused its discretion because she "accepted responsibility for her conduct" when she admitted to the violations; she had completed some services she was required to complete; and she had completed "80% of her probationary sentence" when the court ordered her to serve the entirety of her suspended sentence. Appellant's Br. at 9-10. But Reyes's arguments on appeal simply seek to have this Court reweigh the evidence and substitute our judgment for the trial court's, which we will not do. The trial court's judgment is affirmed.

[10] Affirmed.

Vaidik, J., and Pyle, J., concur.