

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandon D. Gage,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 24, 2023

Court of Appeals Case No.
23A-CR-477

Appeal from the Vanderburgh
Superior Court

The Honorable Robert J. Pigman,
Judge

Trial Court Cause No.
82D03-1903-F5-1725

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

- [1] In 2019, Brandon Gage plead guilty to several offenses, for which the trial court sentenced him to three years, with two years suspended to Drug Abuse Probation Services and one year suspended to probation. In 2020, Gage admitted to having violated the terms of his probation and the trial court sentenced him to three years in the Department of Correction (“the DOC”). In 2022, Gage petitioned to modify his sentence, which the trial court granted, and the trial court suspended the remainder of Gage’s sentence to Drug Abuse Probation Services. In 2023, the trial court revoked Gage’s probation and ordered him to serve the balance of his sentence in the DOC after Gage admitted to having missed multiple drug screenings and failing to pay fees. Gage argues that the trial court abused its discretion in ordering him to serve the balance of his previously-suspended sentence. We affirm.

Facts and Procedural History

- [2] In March of 2019, Gage was involved in a domestic incident with his wife, which resulted in a neighbor calling 911. As law enforcement arrived on scene, Gage attempted to evade them before he was eventually apprehended and arrested. The State charged Gage with Level 5 felony intimidation, Level 5 felony attempted domestic battery with a deadly weapon, Level 6 felony strangulation, Level 6 felony possession of methamphetamine, Class A

misdemeanor resisting law enforcement, Class A misdemeanor possession of marijuana, and Class A misdemeanor interference with the reporting of a crime. The State also alleged Gage to be a habitual offender. In May of 2019, Gage entered into a plea agreement with the State wherein he agreed to plead guilty to Level 5 felony domestic battery by means of a deadly weapon, Level 6 felony strangulation, Level 6 felony possession of methamphetamine, Class A misdemeanor possession of marijuana, and Class A misdemeanor interference with the reporting of a crime, and, in exchange, the State agreed to dismiss the intimidation charge and set Gage's sentence at three years with two suspended to Drug Abuse Probation Services and one to probation. In July of 2019, the trial court sentenced Gage in accordance with that agreement.

[3] The next month, the probation department petitioned to revoke Gage's probation, alleging that Gage had failed to report for drug screens and substance-abuse treatment and to pay fees as ordered. In September of 2019, the probation department amended its revocation petition to allege that Gage had committed new criminal offenses. In July of 2020, Gage admitted to having violated the terms of his probation, and the trial court revoked his probation and sentenced him to three years in the DOC. In March of 2022, Gage petitioned to modify his sentence. A few months later, the trial court granted that petition and suspended the remainder of Gage's sentence to Drug Abuse Probation Services.

[4] In October of 2022, the probation department again petitioned for revocation of Gage's probation, alleging that he had failed to report for four random drug

screens and pay his probation fees. The trial court conducted a hearing on the matter in February of 2023, at which Gage admitted to having violated the terms of his probation. In doing so, Gage testified that he “didn’t know [he] missed that many [drug screens]” and “didn’t have the money” because he had “been between jobs[.]” Tr. Vol. II p. 4. After taking the matter under advisement, the trial court revoked Gage’s probation and ordered him to serve the balance of his sentence in the DOC.

Discussion and Decision

[5] Gage argues that the trial court abused its discretion in ordering him to serve the balance of his previously-suspended when Gage had been unable to pay the fees associated with his probation. “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, 187–88 (Ind. 2007). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Id.* We will uphold a probation revocation if “there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation.” *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). Violation of a single condition of probation is sufficient to support revocation. *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). We review a trial court’s sentencing decisions for probation violations “using the abuse of discretion standard.” *Prewitt*, 878 N.E.2d at 188. A trial court abuses its discretion when “the

decision is clearly against the logic and effect of the facts and circumstances.”

Id. Because probation revocation proceedings are civil in nature, the State need only prove the allegations by a preponderance of the evidence. Ind. Code § 35-38-2-3.

[6] Under Indiana Code section 35-38-2-3(g), a trial court may not revoke a defendant’s probation for failing “to comply with conditions of a sentence that impose financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.” Here, Gage admits that “the State carried its burden to show that [he] knowingly failed to pay in order to comply with the terms of his probation.” Appellant’s Br. p. 9. Nevertheless, Gage argues that he demonstrated his inability to pay and so the trial court “must consider alternative measures of punishment other than imprisonment.” *Runyon v. State*, 939 N.E.2d 613, 616 (Ind. 2010) (quoting *Bearden v. Georgia*, 461 U.S. 660, 672 (1983)). We, however, disagree.

[7] The trial court did not abuse its discretion in revoking Gage’s probation and sentencing him to serve the balance of his sentence in the DOC. To start, the trial court did not revoke Gage’s probation merely because he had not paid probation fees. In addition to Gage’s failure to pay his probation fees, the trial court acknowledged that Gage had “stopped reporting for random drug screens” and had missed four of them. Tr. Vol. II p. 4. Gage’s failure to report for his drug screens alone is sufficient to support the trial court’s revocation of his probation. *See Hubbard*, 683 N.E.2d at 622.

[8] Additionally, Gage admitted that that he had “knowingly [...] fail[ed] to pay” his probation fees. Ind. Code § 35-38-2-3(g). The petitioner must “show facts as to persuade the trial court that further imprisonment should not be ordered.” *Runyon*, 939 N.E.2d at 617. The only evidence Gage offered was his own testimony; indeed, he simply explained that he had been between jobs and had not had the money to pay for the drug screens or his probation fees. The trial court, however, was not required to believe Gage’s self-serving testimony and apparently did not. *Brandenburg v. State*, 992 N.E.2d 951, 954 (Ind. Ct. App. 2013) (finding no abuse of discretion when trial court revoked probation and defendant’s only evidence was his testimony that he had been unable to pay), *trans. denied*.

[9] When it comes to selecting a sanction for a probation violation, trial courts consider the severity of the defendant’s violation, including whether the defendant had committed a new criminal offense. *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Here, the trial court noted that Gage had been given “a number of chances” and had “chosen not to follow through on any of them[.]” Tr. Vol. II p. 13. Further, Gage has “a long list of [probation] violations” and had committed additional offenses. Tr. Vol. II p. 13. Trial courts are best suited to consider “the feasibility of alternative placements[.]” *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). In light of Gage’s history of violating the terms of his probation, we cannot say that the trial court abused its discretion in ordering Gage to serve the balance of his previously-suspended sentence.

[10] The judgment of the trial court is affirmed.

Riley, J., and Weissmann, J., concur.