

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher P. Rowe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 31, 2021

Court of Appeals Case No.
21A-CR-393

Appeal from the Pulaski Superior
Court

The Honorable Crystal A. Kocher,
Judge

Trial Court Cause No. 66D01-
2002-F6-14

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Christopher Rowe (Rowe), appeals the sanction imposed by the trial court following the revocation of his probation.

[2] We affirm.

ISSUE

[3] Rowe presents this court with one issue, which we restate as: Whether the trial court abused its discretion when it ordered Rowe to execute his previously-suspended sentence in jail where he would receive substance abuse treatment.

FACTS AND PROCEDURAL HISTORY

[4] On October 29, 2020, Rowe pleaded guilty to invasion of privacy for knowingly violating a protective order issued by the Pulaski Superior Court. The offense was a Level 6 felony due to Rowe having a previous conviction for invasion of privacy involving the same victim. Rowe's plea agreement provided that he would be sentenced to 540 days, all suspended to probation, and that he would be eligible for having the offense entered as a misdemeanor if he successfully completed probation. Rowe's plea agreement also provided that he was subject to the standard conditions of supervised probation, which were attached to Rowe's written plea agreement. Rowe signed a copy of his probation conditions, acknowledging that he agreed to abide by them. Two of the standard conditions of supervised probation were that Rowe was to refrain from violating the law and from using or possessing illegal substances. Rowe also waived his Fourth Amendment search and seizure rights. The trial court

accepted Rowe's guilty plea and sentenced him according to the terms of his plea agreement. The trial court specifically advised Rowe that the terms of his probation applied immediately.

[5] Sandy Lucas (Lucas) of the Pulaski County Probation Department was assigned to be Rowe's probation officer. Rowe had been on probation on previous occasions in Pulaski County, and Lucas had previously served as his probation officer. On December 16, 2020, Lucas received several telephone calls alerting her that Rowe was in Jasper County using drugs and was endangering himself. At Lucas' request, Sergeant Kevin Lewis (Sergeant Lewis) of the Jasper County Sheriff's Department checked on Rowe at the Economy Inn in Rensselaer. Because Lucas continued to receive telephone calls that day that Rowe was abusing drugs and could die, Lucas and Sergeant Lewis returned to the Economy Inn later that day to check on Rowe. Lucas believed that Rowe was under the influence of some substance, as he was disheveled, fidgety, speaking quickly, and unfocused. Lucas searched Rowe's hotel room and found two baggies in a brown jacket on the bed. Rowe admitted that one baggie contained marijuana that was his. Rowe did not claim ownership of the other baggie that field-tested positive for fentanyl and methamphetamine. Rowe was arrested and charged with Level 6 felony possession of methamphetamine and Class B misdemeanor possession of marijuana.

[6] On December 18, 2020, the State filed a petition to revoke Rowe's probation. On January 5, 2021, the trial court held an initial hearing on the State's

petition, and it set a bond for Rowe. Rowe posted bond and was released from jail.

[7] On February 4, 2021, the trial court convened an evidentiary hearing on the State's petition to revoke Rowe's probation. Lucas testified regarding the events of December 16, 2020, and the trial court determined that the State had shown by a preponderance of the evidence that Rowe had violated the terms of his probation. Lucas then testified regarding possible sanctions. Lucas noted that Rowe had been on probation for a number of convictions and that she had spoken to him several times about addressing his substance abuse issues. Lucas had encouraged Rowe to enter in-patient treatment and had informed Rowe that she would find a place for him if he were willing to go. Rowe would agree to go but would later back out, making excuses about why he could not go. On one occasion, Rowe reported to Lucas that he had checked himself into a twenty-eight-day in-patient treatment center on his own but that he had left before completing treatment. Lucas recommended that Rowe serve his entire previously-suspended sentence in jail because he clearly needed help but had failed to take advantage of previous opportunities offered to him, and, without treatment, she was afraid that Rowe would die. Rowe had informed Lucas prior to the commencement of the revocation hearing that if she drug tested him, he would test positive.

[8] When asked by Rowe's counsel if Rowe should go to a medical facility instead of jail to serve his sentence, Lucas responded that Rowe at times seemed to want to do better but that, left on his own, he made bad choices. As an

example, Lucas cited Rowe's decision to leave his twenty-eight-day in-patient treatment program before completing treatment. Lucas noted that there was no secure in-patient treatment facility for adults and that no existing treatment facility would be capable of securing Rowe. According to Lucas, serving his sentence in jail with treatment was the only option because, otherwise, "he is going to leave anywhere he goes. That is my belief." (Transcript p. 58).

[9] At the conclusion of the evidence on sanctions, the trial court judge, who had presided over several previous matters involving Rowe, observed on the record that Rowe's demeanor in court that day led her to believe that Rowe was under the influence. The trial court noted that she had discussed Rowe's substance abuse with him many times in court, and that it was clear that Rowe's life was in danger due to his failure to address his issues. The trial court ordered Rowe to serve his previously-suspended 540-day sentence in the Pulaski County Jail. The trial court also ordered that Rowe would receive substance abuse treatment there, and that, as a first step, he would immediately be evaluated by a "masters level therapist" who was a licensed clinical addictions counselor. (Tr. p. 64). The trial court observed that "[a]t the same time, . . . you are going to be detoxing and getting sober, so that you can come to, kind of come to this with a more reasonable frame of mind." (Tr. p. 63). The trial court stated that she would require Rowe to execute at least 180 days in jail, "get clean and sober, get some treatment under you, and then the [c]ourt would be willing to look at whether an in-patient facility is the right thing for you to do." (Tr. p. 63).

[10] Rowe now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

[11] Rowe challenges the trial court's decision that he would serve his previously-suspended sentence in jail. It is well-settled that probation is a matter of grace which is left to the trial court's discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). If a trial court revokes probation, it may continue the person on probation, extend the probationary period for not more than one year, or order the execution of all or part of the previously-suspended sentence. Ind. Code § 35-38-2-3(h). The trial court has considerable leeway in deciding how to proceed in probation matters. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). If this were not so, trial court judges would be less inclined to order probation for defendants. *Id.* In light of this considerable leeway, "a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard." *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* In addition, an alternative placement to jail or the Department of Correction is a matter of grace on the part of the trial court, not a right. *See generally Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015), *trans. denied*.

[12] Rowe argues that the trial court abused its discretion when it ordered him to serve his previously-suspended sentence in jail rather than in a medical substance-abuse treatment facility. Seizing on the trial court's observations that he needed to detox and receive treatment to address his long-standing substance abuse issues, Rowe contends that the trial court's placement decision was against the logic and effect of the circumstances because he "was clearly in need

of long-term, in-patient treatment. Instead, he is sitting in a local jail for 18 months.” (Appellant’s Br. pp. 7-8). However, Rowe had previously been offered opportunities to receive treatment in a less-secure facility, but he had either backed out, or in the instance that he did attend treatment, left early. Rowe continued to abuse substances to the point that those who cared about him thought he would die, and he continued his behavior after being released from jail on bond, knowing that he faced revocation of his sentence. Rowe even came to court the day of his revocation hearing under the influence. As Lucas testified, Rowe has demonstrated that he makes poor choices when decisions regarding treating his substance abuse are left to him in a less-secure environment than jail.

- [13] The trial court ordered that Rowe was to receive substance abuse treatment in jail, beginning immediately with an evaluation by a substance abuse expert. The trial court also signaled its willingness to consider an alternative placement once Rowe had been successful at completing 180 days of his sentence and treatment in jail. Rowe has not provided us with legal authority demonstrating that a trial court abuses its discretion in ordering a probationer to serve his sentence in jail rather than at an unsecured treatment facility under similar circumstances, and our own research uncovered none. Given the considerable discretion we accord trial courts in such matters, Rowe’s demonstrated pattern of failing to address his grave substance abuse in less-restrictive environments, and the treatment he will receive in jail, we cannot conclude that the trial court’s decision to place Rowe in jail rather than a treatment facility was

against the logic and effect of the facts and circumstances before it. *See Prewitt*, 878 N.E.2d at 188.

CONCLUSION

[14] Based on the foregoing, we conclude that the trial court acted within its discretion when it ordered Rowe to serve his previously-suspended sentence in jail.

[15] Affirmed.

[16] Najam, J. and Brown, J. concur