MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeffrey Lee Howard, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 14, 2022

Court of Appeals Case No. 21A-CR-1942

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-2006-F6-1484

Najam, Judge.

Statement of the Case

[1] Jeffrey Lee Howard, Jr. appeals his sentence following the trial court's revocation of his probation. Howard presents a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve the balance of his previously suspended sentence in the Department of Correction.

[2] We affirm.

Facts and Procedural History

[3] On June 29, 2020, the State charged Howard with possession of methamphetamine, as a Level 6 felony; unlawful possession of a syringe, as a Level 6 felony; possession of paraphernalia, as a Class C misdemeanor; operating a vehicle while intoxicated endangering a person, a Class A misdemeanor; and operating a vehicle while intoxicated, as a Class C misdemeanor. On October 4, Howard pleaded guilty as charged and agreed to undergo a substance abuse evaluation and to comply with recommended treatment. The plea agreement stated that Howard's sentence would be capped at eighteen months and that the executed portion would be served in the Continuum of Sanctions ("COS") program.

[4] Pending the sentencing hearing, Howard missed two drug screens, and the trial court issued a bench warrant on December 18. That warrant was still outstanding when, on January 19, 2021, Howard failed to appear at his sentencing hearing. On March 11, Howard was arrested, and on March 30,

Howard appeared in court for a hearing regarding his failure to appear and for sentencing. The trial court found Howard in contempt of court and ordered time served as his sanction. The court also sentenced Howard to an aggregate term of thirty months, with eighteen months executed and served on COS and the other twelve months suspended to probation.

[5] One week later, on April 8, the State filed a petition to terminate Howard's participation in work release through COS. In that petition, the State alleged that Howard had violated the COS rules when he possessed paraphernalia and incurred a new criminal charge for the possession of paraphernalia. The State also alleged that Howard was in arrears in the amount of $79.57 to the Community Justice Center. Following a hearing on that petition, the trial court found that Howard had committed two violations, but the court imposed no sanction.

[6] On May 21, the State filed a second petition to terminate Howard's participation in work release through COS. The State alleged that on May 20, Howard had failed to return to the work release facility at 7:00 p.m. as scheduled. On June 2, the trial court issued a bench warrant, which was ultimately served on Howard on July 7. Following a hearing on August 10 on the State's petition, the trial court found that Howard had violated both the terms of COS and the terms of his suspended sentence. And the court ordered Howard to serve the balance of his previously suspended sentence in the Department of Correction ("DOC"). This appeal ensued.

Discussion and Decision

[7] Howard appeals the trial court's order that he serve the balance of his previously suspended sentence in the DOC. Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Upon finding that a defendant has violated a condition of his probation, the trial court may "[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)(3) (2019). We review the trial court's sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs "only where the trial court's decision is clearly against the logic and effect of the facts and circumstances" before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (per curiam). We will not reweigh the evidence or reconsider witness credibility. *Griffith v. State*, 788 N.E.2d 835, 839-40 (Ind. 2003). Rather, we consider only the evidence most favorable to the trial court's judgment to determine if there was substantial evidence of probative value to support the court's ruling. *Id*.

[8] On appeal, Howard acknowledges that the trial court had discretion to order him to serve the balance of his previously suspended sentence in the DOC. But he asserts that, consistent with the Indiana Legislature's directive that Level 6 felons should only rarely be placed in the DOC, "[s]ome punishment in the local jail followed by reinstatement of Community Corrections and/or extension of probation could accomplish the goals of punishment while attempting to treat Howard's problem, i.e., addiction." Appellant's Br. at 15.

Howard states that, "[o]utside of his two violations," he "was taking the steps he needed to take in order to live a sober life and be a productive member of society." *Id.* at 16. In short, Howard asks this Court for leniency in light of his substance abuse addiction. However, Howard's contentions on appeal amount to a request that we reweigh the evidence, which we cannot do.

[9] The trial court's judgment is supported by substantial evidence and, as Howard concedes, was within the court's sound discretion. Howard has squandered multiple opportunities to avoid incarceration in the DOC. In April 2021, the trial court was lenient with Howard when it found the two violations of the COS program and ordered no sanction. In May, Howard failed to return to the work release facility at the end of a workday, and the trial court had to issue a bench warrant. Howard did not appear in the trial court until after his arrest on July 7. We hold that the court's order that Howard serve the balance of his previously suspended sentence in the DOC is supported by the record and is well within the trial court's discretion. We therefore affirm the court's judgment.

[10] Affirmed.

Vaidik, J., and Weissmann, J., concur.