

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dustin Tyler Cross,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 19, 2022

Court of Appeals Case No.
22A-CR-659

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause Nos.
03C01-2101-F6-398
03C01-2107-F6-3575

Crone, Judge.

Case Summary

- [1] On appeal from a revocation of his probation, Dustin Cross challenges only the sanction imposed by the trial court. Finding no abuse of discretion in the reinstatement of Cross's previously suspended sentences, we affirm.

Facts and Procedural History

- [2] In January 2021, the State charged Cross with level 6 felony unlawful possession of a syringe, class A misdemeanor possession of a controlled substance, and class B misdemeanor possession of marijuana. In October 2021, Cross pled guilty, pursuant to a plea agreement, to level 6 felony unlawful possession of a syringe and to class A misdemeanor domestic battery under a different cause number. The State agreed to dismiss the remaining charges under both causes. In November 2021, the trial court sentenced Cross to 912 days, but after awarding credit time, Cross had 664 days left to serve for the level 6 felony. The judge ordered a 365-day sentence for the class A misdemeanor, to be served consecutively, for a total of 1029 days. The judge suspended the consecutive sentences to probation to be supervised by community corrections.
- [3] In December 2021, the State filed a petition for revocation of probation alleging that Cross violated the terms and conditions of his probation by testing positive for methamphetamine and/or marijuana on four separate dates, by refusing to open the door of his home for community corrections officers, and by verbally admitting to using methamphetamine on a different occasion. During a

February 2022 factfinding hearing, Cross admitted to the multiple violations of the terms and conditions of his probation. Finding that Cross violated his probation, the trial court ordered him to serve the balance¹ of his suspended sentence in the Bartholomew County Jail. This appeal ensued.

Discussion and Decision

[4] Cross appeals what he terms “the most extreme sanction possible” on what was his first petition to revoke probation in this matter. Appellant’s Br. at 13. 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). 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). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

¹ The trial court credited Cross with 58 days from the 1029-day sentence, thus the balance was 913 days.

[5] Cross's sole assertion on appeal is that the trial court's decision to revoke the entirety of his previously suspended sentence was too harsh given that he made some attempts to seek rehabilitation services.² However, in determining the appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances. *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*. So long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the court may properly order execution of a suspended sentence upon a finding of a single violation by a preponderance of the evidence. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. In light of Cross's undisputed multiple violations of the terms and conditions of his probation, admitted continuing illegal drug use, missed appointments for programming, and repeated unsuccessful past probation despite prior rehabilitation services, the trial court was well within its discretion to determine that Cross was not a good candidate to continue on probation. We therefore conclude that the trial court did not abuse its discretion when it ordered Cross to serve the entirety of his previously suspended sentence in the county jail.

[6] Affirmed.

Vaidik, J., and Altice, J., concur.

² Yet, Cross missed appointments with two separate treatment agencies and missed meetings with his probation officer.