

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Jamariahn Gregory,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

August 12, 2024

Court of Appeals Case No.
23A-CR-2818

Appeal from the Vigo Superior Court
The Honorable Sarah K. Mullican, Judge

Trial Court Cause No.
84D03-1602-F2-475
84D03-1512-F4-3132

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

- [1] Jamariahn Gregory appeals following the revocation of his probation. He argues the trial court abused its discretion by revoking his probation and ordering him to serve the remainder of his sentence incarcerated. We affirm.

Facts and Procedural History

- [2] On December 23, 2015, under cause number 84D03-1512-F4-3132 (“F4-3132”), the State charged Gregory with Level 4 felony dealing in cocaine,¹ Level 6 felony possession of cocaine,² and Level 6 felony maintaining a common nuisance.³ On February 17, 2016, under cause number 84D03-1602-F2-475 (“F2-475”), the State charged Gregory with Level 2 felony dealing in a narcotic drug,⁴ Level 2 felony dealing in methamphetamine,⁵ Level 3 felony possession of methamphetamine,⁶ Level 4 felony possession of a narcotic drug,⁷ Level 4 felony dealing in methamphetamine,⁸ Level 6 felony possession of

¹ Ind. Code § 35-48-4-1(c).

² Ind. Code § 35-48-4-6.

³ Ind. Code § 35-45-1-5.

⁴ Ind. Code § 35-48-4-1(e).

⁵ Ind. Code § 35-48-4-1.1(e).

⁶ Ind. Code § 35-48-4-6.1(d).

⁷ Ind. Code § 35-48-4-6(c).

⁸ Ind. Code § 35-48-4-1.1(c).

methamphetamine,⁹ two counts of Level 4 felony dealing in a narcotic drug,¹⁰ two counts of Level 6 felony possession of a narcotic drug,¹¹ and five counts of Level 6 felony maintaining a common nuisance.

[3] On October 17, 2016, Gregory pleaded guilty to one count of Level 4 felony dealing in cocaine under F4-3132 and to one count of Level 3 felony dealing in a narcotic drug and one count of Level 3 felony dealing in methamphetamine under F2-475. Pursuant to the plea agreement, all other counts were dismissed. On November 15, 2016, the trial court held a sentencing hearing for both cause numbers and ordered Gregory to serve concurrent sentences of twelve years for each of the Level 3 felonies and eight years for the Level 4 felony. Gregory was to serve two years in work release, followed by two years in home detention, and eight years on probation.¹²

[4] Gregory completed the executed portion of his sentence and began probation on February 14, 2019. On April 15, 2019, the State filed a notice of probation

⁹ Ind. Code § 35-48-4-6.1(a).

¹⁰ Ind. Code § 35-48-4-1(c).

¹¹ Ind. Code § 35-48-4-6(a).

¹² Per the standard terms of probation, Gregory was required to not violate any laws; to notify the probation officer within 48 hours of any change of address, residence, or phone number; to not possess or use any controlled substance; to not leave the State of Indiana without written permission, and to report to the Adult Probation Office monthly. (*See App. Vol. 2 at 171-173.*) In addition to the standard terms of probation, Gregory was required to “(1) report to Vigo County Community Corrections for alcohol and drug services and abide by any recommendations for education, counseling, and treatment; (2) attend at least 1 Alcoholics Anonymous/Narcotics Anonymous meetings[sic] per week and provide proof of attendance to his Adult Probation Officer while on formal probations; [and] (3) submit to breath tests and/or random urinalysis[.]” (*Id.* at 9.)

violation alleging Gregory violated several conditions of his probation. The State asserted Gregory tested positive for methamphetamine and amphetamine during one drug screen, tested positive for marijuana during another drug screen, left Indiana without permission, and did not notify the probation office of a change of address. Gregory was arrested and transferred to community corrections. On March 9, 2021, the State filed a second notice of probation violation alleging Gregory again left Indiana without permission. On December 8, 2022, the State filed a third notice of probation violation alleging Gregory missed five drug screens, tested positive at three drug screens, and lied about receiving services from the Hamilton Center. The State amended the third notice of probation violation on October 3, 2023, to allege Gregory tested positive at two additional drug screens, failed to provide proof of treatment at the Hamilton Center, and accrued charges of five felonies and one misdemeanor in a different county.

- [5] On October 30, 2023, the trial court held an evidentiary hearing at which Gregory testified about failing drug tests and missing drug screens. The State presented testimony from Gregory’s probation officer regarding the alleged violations and admitted as exhibits the charging information and probable cause affidavit for Gregory’s new charges.¹³ The court found Gregory violated

¹³ The charging information out of Marion County alleged Gregory committed: (1) Level 5 felony intimidation by threatening to kill S.S. with a knife; (2) Level 6 felony “domestic violence animal cruelty” by knowingly or intentionally killing S.S.’s dog to threaten, coerce, intimidate, harass, or terrorize S.S.; (3) Level 6 felony killing a domestic animal without consent of the owner by killing S.S.’s dog without her consent; (4)

the terms of his probation due to the positive drug screens and his failure to complete substance abuse treatment, and it ordered him to serve the remainder of his eight-year suspended sentence incarcerated.

Discussion and Decision

[6] Gregory argues the trial court abused its discretion when it revoked his probation and ordered him to serve the remainder of his sentence incarcerated. “Probation is a matter of grace left to trial court discretion.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). We will reverse the trial court’s decision to revoke probation only for an abuse of that discretion. *Id.* “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

[7] Probation revocation is a two-step process. “First, the trial court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation.” *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). When probation has been violated, the trial court can “[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(a)(1), (h)(3) (2015). The

Level 6 felony domestic battery by touching S.S. in a rude, insolent, or angry manner in the presence of a child under 16; (5) Level 6 felony intimidation by threatening to kill S.S. or commit arson; and (6) Class A misdemeanor intimidation by threatening to kill S.S.’s dog. (Ex. Vol. at 3-4.) At the revocation hearing, Gregory testified that S.S. was the mother of five of his children and that he had been living with her and the children during part of 2023.

appropriateness of any sanction imposed by the trial court “depend[s] upon the severity of the defendant’s probation violation.” *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013).

[8] Regarding the first step of the probation revocation process, Gregory violated the terms of his probation by testing positive for THC at least twice, by missing multiple drug screens, and by being dishonest with the probation department about whether he was participating in services at the Hamilton Center. The trial court did not abuse its discretion when it determined Gregory had violated the terms of his probation. *See, e.g., Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019) (the trial court did not abuse its discretion in finding that the probationer violated the terms of his probation following several positive drug screens).

[9] With respect to the second step of the probation revocation inquiry, the trial court concluded Gregory’s violations warranted revocation of his probation and ordered Gregory to serve the remainder of his sentence incarcerated. Gregory argues the trial court should have ordered him to serve the remainder of his sentence in community corrections or to serve a shorter portion of his remaining sentence incarcerated because, while on probation, he invested a significant amount of time in the lives of his nine children. He asserts a shorter sentence or commitment to community corrections would allow him to be more present in his children’s lives. Probation and community corrections programs are alternatives to the Indiana Department of Correction that are made available to convicted persons at the sole discretion of the trial court.

McQueen v. State, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). A defendant is not entitled to either alternative, and placement therein is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*.

[10] The trial court clearly explained its reasoning when it revoked Gregory’s probation:

[I]t looks like people have given you the opportunities for help and you’ve just not taken them [I]t seems to be he’s been on home detention, he’s violated Home Detention. He’s been on Work Release, violated that. Violated probation. I don’t see that there’s any reason to give him Home Detention or Work release[.]

(Tr. Vol. 2 at 33.) Because Gregory repeatedly violated probation by missing drug screens, testing positive during drug screens, and lying about receiving services from the Hamilton Center, the trial court acted within its discretion when it ordered him to serve the remainder of his sentence in prison. *See Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005) (“a single violation of the conditions of probation is sufficient to support the decision to revoke probation”).

Conclusion

[11] The trial court did not abuse its discretion when it revoked Gregory’s probation and ordered him to serve the remainder of his eight-year sentence incarcerated. We accordingly affirm.

[12] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana

Jesse R. Drum
Assistant Section Chief, Criminal Appeals
Indianapolis, Indiana