

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Pauline Eileen Severt,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 4, 2022

Court of Appeals Case No.  
21A-CR-1571

Appeal from the Decatur Superior  
Court

The Honorable Matthew D. Bailey,  
Judge

Trial Court Cause No.  
16D01-1509-CM-595

**Altice, Judge.**

### Case Summary

[1] Pauline Severt appeals the revocation of probation, challenging the sufficiency of the evidence. Severt claims that the revocation order must be set aside because the State failed to prove that she committed additional criminal offenses that were charged while she was on probation. Severt also maintains that the trial court abused its discretion in revoking 550 days of a previously imposed 2190-day suspended sentence and ordering her to serve that time in the Indiana Department of Correction (DOC).

[2] We affirm.

### **Facts and Procedural History**

[3] On October 6, 2016, Severt entered into a plea agreement, resolving three separate criminal cases. Relevant here, she pled guilty to fraud on a financial institution (fraud), a Level 5 felony, for making several unauthorized purchases on another's debit card, and to synthetic identity deception (drug deception), a Level 6 felony. The trial court sentenced Severt to 2190 days, all suspended to probation with 545 days of home detention on the fraud conviction. For the drug deception offense, the trial court sentenced Severt to a term of 365 days, all suspended to probation to be served on home detention. The sentences were ordered to run concurrent with each other, but consecutive to the sentences imposed in the two other cases resolved by the plea agreement.

[4] The conditions of Severt's probation included reporting to the probation office as directed, refraining from committing any criminal acts, and notifying the probation office within twenty-four hours of an address change or having

contact with law enforcement officials. Severt was also ordered to refrain from using illegal drugs and to submit to random drug testing.

- [5] In September, October, and November 2019, and in February 2020, Severt tested positive for methamphetamine use. Severt also failed to report for mandatory drug screens in February 2020, and she failed to contact the random drug screening system on multiple occasions.
- [6] On March 10, 2020, the State petitioned to revoke Severt's probation, alleging that she violated various conditions of probation including the use of methamphetamines, failing to report for drug testing, and failing to call into the drug screening system. Thereafter, on July 21, 2020, Severt was charged with theft, a Class A misdemeanor. On August 6, 2020, the State filed a supplemental probation revocation petition alleging that Severt had been charged with a new criminal offense.
- [7] The State filed a second supplemental probation revocation petition on April 15, 2021, incorporating the allegations of the previous petitions and alleging that Severt had been arrested that month and charged with five counts of drug-related felonies. The petition also alleged that Severt failed to report: a) for monthly probation meetings in January through March of 2021; b) a change of address; and c) contact with law enforcement officers following her arrest.
- [8] At the April 27, 2021 revocation hearing, Severt admitted that she violated the conditions of her probation by failing four drug screens and being arrested and

charged with additional crimes. Severt also admitted that she failed to report for her monthly probation meetings in February and March 2021.

[9] Probation officer Eric Adkins testified that while Severt’s January meeting with the probation department had been rescheduled, she failed to report on the rescheduled date. Adkins also testified that Severt failed to timely report a change of address and her contact with law enforcement when she was arrested in April. The trial court took the matter under advisement and scheduled a sentencing hearing for June 24, 2021. At that hearing, the trial court revoked Severt’s probation and ordered her to serve 550 days of the previously suspended sentence.

[10] Severt now appeals.

## **Discussion and Decision**

### **I. Sufficiency of the Evidence**

[11] In addressing Severt’s claim that the evidence was insufficient to prove that she violated her probation, we initially observe that probation is not a right that a defendant is entitled to, but rather “a matter of grace left to trial court discretion.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). When probation is ordered, “[t]he trial court determines the conditions of probation and may revoke probation if the conditions are violated.” *Id.*; Ind. Code § 35-38-2-3(h).

[12] We also note that a probation revocation hearing “is in the nature of a civil proceeding” and, therefore, an “alleged violation of probation only has to be

proven by a preponderance of the evidence.” *Whatley v. State*, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). An arrest or the mere filing of a criminal charge against a defendant, however, will not alone warrant the revocation of probation because the State must prove that the defendant committed the charged offense by a preponderance of the evidence. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013); *Jackson v. State*, 6 N.E.3d 1040, 1042 (Ind. Ct. App. 2014); I.C. § 35-38-2-3(f). A single violation of a condition of probation is enough to support a probation revocation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015); *see also Brown v. State*, 162 N.E.3d 1179, 1183 (Ind. Ct. App. 2021) (holding that a probationer’s failure to attend appointments with his/her probation officer warrants the revocation of probation).

[13] In this case, Severt maintains that the State showed only that she had been arrested and charged with new criminal offenses. Thus, Severt contends that the probation revocation order must be set aside because the State failed to prove that she committed the new offenses by a preponderance of the evidence. While Severt correctly maintains that probation may not be revoked simply because she was arrested and charged with new criminal offenses, she overlooks the fact that the trial court did not revoke her probation for that reason. The trial court specifically acknowledged at the revocation hearing that “[Severt is] *not* being violated . . . for being arrested.” *Transcript Vol. II* at 44 (emphasis added). Rather, the trial court determined that it was revoking Severt’s probation “for the other . . . violations” that the State proved at the hearing. *Id.*

[14] Severt admitted at the revocation hearing that she violated the conditions of probation by using methamphetamine and missing meetings with her probation officer in February and March 2021. Probation officer Adkins testified that Severt also missed the monthly meeting in January 2021 and failed to appear on the rescheduled date. Adkins also testified that Severt failed to notify her probation officer about her April arrest. All this conduct amounted to violations of the conditions of probation that Severt agreed to follow under her plea agreement.

[15] In sum, the record demonstrates that Severt's probation was not revoked because she allegedly committed additional criminal offenses while on probation. Rather, the State presented sufficient evidence at the revocation hearing—along with Severt's admissions—that she violated other conditions of probation as alleged. Thus, we decline to set the revocation order aside.

## II. Length of Sentence

[16] As for the trial court's decision to order Severt to serve a portion of her previously suspended sentence in the DOC, we note that when a defendant's probation is revoked, the trial court can "order execution of all or part of the sentence that was suspended at the time of the initial sentence." I.C. § 35-38-2-3(h)(3). When a trial court is considering ordering probation rather than incarceration, the judge "[has] considerable leeway in deciding how to proceed." *Prewitt*, 878 N.E.2d at 188. Once the trial court has determined that the probationer violated the conditions of probation, the selection of an

appropriate sanction will depend upon the severity of the defendant’s probation violation. *Brown*, 162 N.E.3d at 1183. A trial court’s sentencing decision for probation violations is reviewable under the abuse of discretion standard. *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs only when “the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

- [17] In this case, Severt admitted at the revocation hearing that she relapsed and tested positive for methamphetamine use on four different occasions. These positive drug screens are significant violations and demonstrate a pattern of Severt’s repeated drug use during her probationary period. *See, e.g., Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019) (holding that multiple failed drug screens are “hardly mere ‘technical’ violations of probation”), *trans. denied*.
- [18] Severt also admitted missing two appointments with her probation officer, and Officer Adkins testified that Severt missed at least one other appointment. Severt also failed to report a change of address, and she failed to contact her probation officer about the April 15, 2021 arrest. In short, the evidence established that Severt repeatedly violated various conditions of probation from September 2019, through March 2021.
- [19] As a result of these violations, the trial court revoked only a portion of Severt’s suspended sentence and ordered her to serve an executed sentence of 550 days. Given the circumstances here, it is apparent that the trial court imposed a meaningful sanction on Severt for her violations that would impress on her the

seriousness of abiding by the conditions of probation. In other words, the trial court considered the severity of Severt's violations and determined an appropriate sanction for those violations. Thus, we cannot say that the trial court abused its discretion in ordering Severt to serve 550 days of her previously-suspended sentence in the DOC.

[20] Judgment affirmed.

Bailey, J. and Mathias, J., concur.