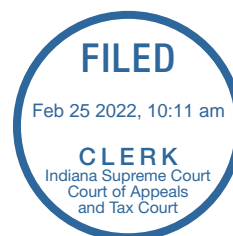


## MEMORANDUM DECISION

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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### ATTORNEY FOR APPELLANT

Justin R. Wall  
Wall Legal Services  
Huntington, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
Samuel J. Dayton  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Kody E. Doutt,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

February 25, 2022

Court of Appeals Case No.  
21A-CR-2264

Appeal from the Wells Circuit  
Court

The Honorable Kenton W.  
Kiracofe, Judge

Trial Court Cause No.  
90C01-1902-F3-1

**Crone, Judge.**

## Case Summary

- [1] Kody E. Doutt appeals the trial court’s revocation of his probation. He challenges only the sanction imposed by the trial court upon revocation. We affirm

## Facts and Procedural History

- [2] In February 2019, the State charged Doutt with level 3 felony robbery and class A misdemeanor interfering with the reporting of a crime. In August 2019, Doutt pled guilty, pursuant to a plea agreement, to level 6 felony theft in this cause and to class C misdemeanor possession of marijuana under a different cause number. The trial court sentenced him to 545 days with 126 days credited for time served and 419 days suspended to probation. On March 4, 2020, the State filed a petition for revocation of probation alleging that Doutt violated his probation by committing level 6 felony railroad mischief. Doutt twice failed to appear for scheduled revocation hearings, and warrants were issued for his arrest. On September 15, 2021, Doutt finally appeared for an evidentiary hearing. During the hearing, Doutt admitted to the probation violation.<sup>1</sup> The trial court found that Doutt’s explanations for his behavior lacked credibility but explained that it “might” still have placed Doutt back on probation if not for his multiple failures to appear. Tr. Vol. 2 at 20. The court concluded that

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<sup>1</sup> Prior to the revocation hearing in this case, Doutt pled guilty to that offense and was sentenced to one and one-half years with all but ninety days suspended to probation. Doutt was also ordered to pay substantial restitution for damages caused by his crime. During the revocation hearing, the trial court took judicial notice of the conviction, as well as Doutt’s failure to make any payments toward his restitution obligation.

Doutt's failures to appear indicated that he "was not appropriate for community supervision any longer." *Id.* Accordingly, the trial court revoked Doutt's probation and imposed the entirety of his previously suspended sentence of 419 days. This appeal ensued.

## Discussion and Decision

[3] Doutt appeals the trial court's order revoking his probation and imposing the balance of his previously suspended sentence. "Probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* We review an appeal from a trial court's probation determination and sanction for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). 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).

[4] Probation revocation is a two-step process. The trial court must first make a factual determination that a violation of a condition has occurred. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied* (2020). If a violation of a condition is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* "However, where, as here, a

probationer admits to the violations, the trial court can proceed immediately to the second step of the inquiry and determine whether the violation warrants revocation.” *Id.* In determining whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.* Once a violation has been found and revocation of probation is warranted, the trial court may impose one or more of the following sanctions: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person’s probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. *Id.* (citing Ind. Code § 35-38-2-3(h)).

[5] Douth’s sole assertion on appeal is that, in imposing the sanction for his probation violation, the trial court abused its discretion by failing to give enough weight to his mitigating evidence. 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*. Given Douth’s admitted violation, and his repeated prior failures to appear, the trial court was within its discretion to determine that Douth was not a good candidate to continue on

probation. We therefore conclude that the trial court did not abuse its discretion when it ordered Douff to serve the entirety of his previously suspended sentence.<sup>2</sup>

[6] Affirmed.

Bradford, C.J., and Tavitas, J., concur.

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<sup>2</sup> The State notes that the Indiana Department of Correction Database indicates that Douff has a possible release date of February 3, 2022, and that the issue raised in this appeal may be moot in the event he has been released prior to any ruling from this Court. The record does not indicate that Douff has actually been released so we decline the State's invitation to dismiss.