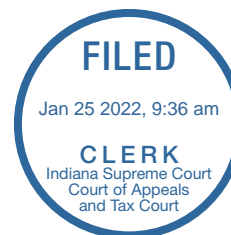


MEMORANDUM DECISION

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

Jason D. Walden,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 25, 2022

Court of Appeals Case No.
21A-CR-1829

Appeal from the DeKalb Superior
Court

The Honorable Monte L. Brown,
Judge

Trial Court Cause No.
17D02-1912-F5-104

Najam, Judge.

Statement of the Case

- [1] Jason D. Walden appeals the trial court’s revocation of his probation. Walden raises one issue for our review, namely, whether the court abused its discretion when it revoked his probation and ordered Walden to serve the entirety of his previously suspended sentence.
- [2] We affirm.

Facts and Procedural History

- [3] On December 11, 2019, Walden was charged with possession of methamphetamine, as a Level 5 felony; unlawful possession of a syringe, as a Level 6 felony; maintaining a common nuisance, as a Level 6 felony; and possession of paraphernalia, as a Class C misdemeanor. On March 9, 2020, Walden entered into a plea agreement, under which Walden pleaded guilty to possession of methamphetamine, and the State dismissed the remaining counts. The terms of the agreement provided that Walden was to be released on his own recognizance, immediately enter a halfway house program, report to community corrections every other week, attend at least one NA or AA meeting each week, and complete a drug and alcohol program through the county probation department. Sentencing was deferred, pending “[Walden’s] compliance” with those terms of the plea agreement. Tr. Vol. 2 at 13; *see also* Appellant’s App. Vol. 2 at 44. The agreement further provided that the executed portion of Walden’s sentence would be capped at three years.

[4] The court accepted Walden’s guilty plea,¹ informed Walden of the consequences of violating the terms of his plea agreement, and lectured Walden as follows:

Jason, this is a pretty significant opportunity for you. It’s also . . . an opportunity for you to fail miserably. If you fail and that failure consists of another charge, you’ve got big problems on your hands. It almost certainly would involve consecutive sentencing. Probably a harsher sentence, okay? So there’s all kinds of bad things can come of that. And, and I tell you that hopefully as motivation for you . . . to do what you need to do to get control of your life . . . and I don’t know to what extent you’ve lost it, but if you’re charged with methamphetamine . . . in my experience, dealing with methamphetamine, it steals your life. It ruins your relationships[;] all kinds of ugly things that go along with that. You’ve been given an opportunity to deal with it. Take full advantage of it.

Tr. Vol. 2 at 23-24.

[5] On December 21, the court held a sentencing hearing, during which the parties presented evidence that Walden had completed the terms of his plea agreement. At the conclusion of the hearing, both the chief deputy prosecutor and defense counsel recommended that Walden receive a suspended sentence. The court then sentenced Walden to a term of five years, with eighty-nine days executed as time served and the remainder of the sentence—four years and 276 days—

¹ In its written order issued on March 9, 2020, the trial court stated that the plea agreement was “under advisement by the Court.” Appellant’s App. Vol. 2 at 49.

suspended. The court placed Walden on supervised probation for the duration of the suspended sentence. As conditions of his probation, he was required to “keep all appointments” with his probation officer and contact his probation officer immediately if he was unable to attend an appointment, “remain free from any further criminal arrests or convictions[,]” and not use any controlled substances without a prescription. Appellant’s App. Vol. 2 at 60.

[6] On February 19, 2021, Walden’s probation officer filed a petition to revoke his probation. In that petition, the State alleged that Walden had missed an appointment with his probation officer, had been charged with committing Level 6 felony resisting law enforcement and Class C misdemeanor reckless driving, and had tested positive for methamphetamine. The petition read in relevant part as follows:

[Walden] no call[ed] and no showed his probation appointment with DeKalb County Probation on January 20, 2021. [Walden] was transferred to Allen County Probation supervision on January 29, 2021. [Walden] contacted probation on February 4, 2021[,] stating that he recently bonded out of jail for a new offense. He stated that he was driving without a license and an officer got behind his vehicle so he chose to take off in a “high speed chase.” He reported that he was traveling at speeds over 100 mph. He stated that he then took off on foot to attempt to evade law enforcement. [Walden] stated he was not thinking about anyone else or the danger he posed to other people. [Walden] was informed by Allen County Probation that they were requesting a drug screen be completed. [Walden] contacted DeKalb Probation to state that he recently used methamphetamine because he “just figured I was going back to prison.”

Id. at 70. The State filed supplemental petitions to revoke Walden’s probation , alleging that Walden had missed probation appointments without notifying his probation officer on February 26, and on March 2, 5, 8, and 18, 2021.

[7] On July 12, the court held a hearing on the State’s petitions to revoke Walden’s probation, and Walden admitted to the probation violations. At the conclusion of the hearing, and before pronouncing a sentence, the court addressed Walden as follows:

Jason, you’re a shipwreck. You’re a shipwreck. You haven’t done anything right. Nothing. . . . I can’t give you another chance, Jason. You’ve had more chances than most[;] . . . it’s all gone south. [I] just . . . don’t find your testimony credible with regard to give me another chance, I’ll get it right I promise you, whatever words you used. . . . I don’t buy it. . . . [Y]ou haven’t done anything that I’ve told you to do, for the most part.

Tr. Vol. 2 at 96. The court then found that Walden had violated his probation. The court revoked Walden’s probation and ordered him to serve the entirety of his suspended sentence in the Department of Correction (“DOC”) or the DeKalb County Jail. This appeal ensued.

Discussion and Decision

[8] Walden contends that the trial court abused its discretion when it revoked his probation and ordered him to serve his entire suspended sentence. “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if

the conditions are violated. *Id.*; *see also* Ind. Code § 35-38-2-3(a) (2015). Indeed, violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Upon determining that a probationer has violated a condition of probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” I.C. § 35-38-2-3(h)(3). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Prewitt*, 878 N.E.2d at 188. We review a trial court’s decision to revoke probation and a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. *Id.* (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[9] Specifically, Walden maintains that, when he “relapsed,” the trial court should have granted him “another chance” instead of revoking his probation and “[taking] the most severe action [of sentencing] him [to] almost five years in prison” because, according to Walden, his

[probation] violations consisted of picking up a [L]evel 6 felony, a positive drug screen, and missing three (3) appointments with probation. In the year before the violations, [he] did everything that was asked of him. He participated and completed an intensive drug rehabilitation program, held a job, and kept out of trouble.

Appellant’s Br. at 7-8. Walden further maintains that, taking into consideration “alternative placement options[and the] nature of [his probation] violations, the sentence imposed by the trial court was not proportional and is too severe.” *Id.* at 11.

[10] In support of his arguments, Walden relies on *Johnson v. State*, 62 N.E.3d 1224 (Ind. Ct. App. 2016). However, *Johnson* is distinguishable from the case before us. *Johnson* involved an individual with limited intellectual ability who had difficulty understanding the terms of his placement with community corrections. *See Johnson*, 62 N.E.3d at 1226-29. The trial court imposed a severe sentence—ordering Johnson to serve the entirety of the remaining portion of his seven-year executed sentence in the DOC—for minor probation violations that included leaving house arrest for an authorized trip at a time slightly different from that which was authorized, failing to timely pay fees, and sitting on a bench outside his apartment complex during house arrest. *Id.* at 1227-28.

[11] By contrast, Waldens’ probation violations were anything but minor. Approximately one month after Walden began serving his probation, he missed an appointment with his probation officer. Approximately two weeks after the missed appointment, Walden was charged with Level 6 felony resisting law enforcement and Class C misdemeanor reckless driving for leading law enforcement on a high-speed chase, traveling at speeds over 100 mph, crashing the vehicle, and attempting to flee on foot. And he tested positive for methamphetamine and amphetamine. Walden then proceeded to miss five

additional appointments with his probation officer. As his probation officer testified at the probation violation and admission hearing, “Yes, they are missed appointments, but it’s missed appointments cause (sic) he either didn’t want to be tested, he didn’t want to be caught, he didn’t want to be confronted, um, he just didn’t want to do it.” Tr. Vol. 2 at 93-94. The probation officer also testified that she had told Walden that he displayed “a complete and total noncompliance . . . with [his] probation[.]” *Id.* at 93.

[12] Walden admitted to violating the terms of his probation. He was not entitled to another chance on probation. The decision to sentence him to probation was a matter of grace left to the court’s discretion. *See Prewitt*, 878 N.E.2d at 188. After extending Walden considerable leniency by initially placing him on supervised probation, the trial court told Walden, “I can’t give you another chance,” and ultimately determined that Walden should serve his entire suspended sentence in the DOC. Tr. Vol. 2 at 96. We hold that, under the circumstances of the case before us, the court acted well within its discretion when it revoked Walden’s probation and ordered him to serve his entire suspended sentence in the DOC.

[13] Walden also argues that he had “numerous mitigators that should have been considered by the [trial] court[,]” and the court failed to “properly weigh the mitigators . . . when it determined a [DOC] sentence was appropriate.” Appellant’s Br. at 8. Walden asserts that “it is clear” from his pre-sentence investigation report that “he had a terrible upbringing that set him up for failure”; he began drinking at the age of twelve, had used numerous illegal

substances by the age of eighteen, and had spent over ten years in the DOC by the age of thirty-two; he had a girlfriend and a newborn child that he was supporting; he had held a job for at least seven months prior to his sentencing; and he had been able to complete a full year of sobriety. *Id.* at 8-9.

[14] We remind Walden that our trial courts are not required to balance “aggravating or mitigating circumstances when imposing sentence in a probation revocation proceeding.” *Treece v. State*, 10 N.E.3d 52, 59-60 (Ind. Ct. App. 2014) (quotation omitted), *trans. denied*. Instead, the trial court had three options after finding Walden violated probation: (1) continue the probationary period; (2) extend the probationary period by up to one year; or (3) execute all or part of the previously suspended sentence. I.C. § 35-38-2-3(h). The court here chose option three, and this was not an abuse of discretion.

[15] We conclude that the trial court did not abuse its discretion when it revoked Walden’s probation and ordered him to serve his entire suspended sentence in the DOC. The judgment of the trial court is affirmed.

[16] Affirmed.

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