

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Anne Medlin Lowe
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Dennis Curtis Sanders,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 24, 2023

Court of Appeals Case No.
23A-CR-419

Appeal from the Howard Superior
Court

The Honorable Matthew J. Elkin,
Judge

The Honorable William C.
Menges, Jr., Senior Judge

Trial Court Cause Nos.
34D01-1907-F5-2310, 34D01-2111-
F5-3465

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

- [1] Dennis C. Sanders appeals the trial court's revocation of his probation and subsequent sentence to the Indiana Department of Correction (the DOC). Although Sanders admitted to violating the terms of probation, he argues the trial court's revocation order should be reversed for three reasons: (1) the court violated due process by failing to properly inform Sanders of the rights he waived before he admitted to violating probation; (2) the court abused its discretion in denying Sanders's motion to continue the January 27, 2023 sentencing hearing; and (3) the court abused its discretion when it revoked probation and ordered Sanders to serve the remainder of his sentence in the DOC.
- [2] We affirm.

Facts & Procedural History

- [3] On May 23, 2022, Sanders accepted a plea agreement in which he pleaded guilty to home improvement fraud and corrupt business influence, both Level 5 felonies. For the fraud conviction, the trial court sentenced Sanders to 2190 days with 481 days executed and 1709 days suspended to probation. For the corrupt business conviction, the court sentenced Sanders to 2190 days with one day executed and 2189 days suspended to probation. The court ordered the

sentences to be served consecutively. Sanders was also ordered to pay \$88,720.00 in restitution.

[4] On December 1, 2022, Sanders was charged with operating a vehicle with an alcohol concentration equivalent to .15 or more, and operating a vehicle while intoxicated endangering a person, both Class A misdemeanors. As a result of the new charges, the State filed a petition to revoke probation on December 6. Two days later the court held an initial hearing where it informed Sanders of his rights as a probationer pursuant to Ind. Code § 35-38-2-3. Sanders entered a plea of not guilty to the probation violation. On December 27, the court held a hearing during which Sanders admitted to violating the conditions of his probation.

[5] The day before the January 24, 2023 sentencing hearing on the probation violation, Sanders moved for a continuance, which the court denied. Sanders again asked the court for a continuance on the day of the hearing in part on the grounds that his newly hired attorney needed more time to prepare. The court granted a continuance for one day. On January 25, the court continued the hearing to January 27 due to inclement weather. On January 26, Sanders filed his third request for a continuance. Sanders argued, among other things, that his attorney required additional time to prepare, one of his witnesses was unavailable, and he was suffering from extreme vertigo. The court denied Sanders's request. At the conclusion of the hearing, the court revoked Sanders's probation and ordered him to serve the balance of his consecutive sentences, a

total of 3898 days, in the DOC. This appeal ensued. Additional facts will be provided as necessary.

Discussion & Decision

1. Due Process

[6] A probation revocation proceeding is civil in nature, and the State need only prove alleged violations by a preponderance of the evidence. *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*. Probation is a “matter of grace,” a form of “conditional liberty that is a favor, not a right.” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). Probationers are not afforded the entirety of rights given to defendants in criminal proceedings. *Uitley v. State*, 167 N.E.3d 777, 781 (Ind. Ct. App. 2021), *trans. denied*; *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997) (holding that those on “conditional liberty” are not entitled to the same due process rights afforded to those involved in criminal matters). Indeed, we have held that due process rights applicable in a probation revocation are “more flexible than in a criminal prosecution.” *McCauley v. State*, 22 N.E.3d 743, 748 (Ind. Ct. App. 2014), *trans. denied*.

[7] Even so, the Due Process Clause of the Fourteenth Amendment to the United States Constitution compels substantive and procedural safeguards on the revocation of a probationer’s conditional liberty. *Knecht v. State*, 85 N.E.3d 829, 833 (Ind. Ct. App. 2017); *see also Medicus v. State*, 664 N.E.2d 1163, 1164 (Ind.

1996) (clarifying that though distinct from criminal trials, probation revocation hearings are still subject to due process considerations). Explicit safeguards for probationers include written notice of alleged violations; disclosure of evidence against the probationer; the opportunity to be heard and present evidence; the right to confront and cross-examine witnesses; and a neutral hearing body.

Wann v. State, 997 N.E.2d 1103, 1105 (Ind. Ct. App. 2013); *see also* I.C. § 35-38-2-3(f). Rather than have an evidentiary hearing, a probationer may admit to a probation violation, but he must be “advised that he is giving up” these protections. *Saucerman v. State*, 193 N.E.3d 1028, 1031 (Ind. Ct. App. 2022).

Ultimately, whether a probationer was denied due process is a question of law we review de novo. *Hilligoss v. State*, 45 N.E.3d 1228, 1230 (Ind. Ct. App. 2015).

[8] In the instant case, Sanders argues that the trial court failed to properly inform him of the rights he would waive by admitting to violating probation. Sanders relies on *Hilligoss* in arguing that the record is “silent as to the substance of any advisement given to [him].” *Appellant’s Reply Brief* at 8. In *Hilligoss*, the defendant argued that he was not advised that by admitting to the violation of probation, he was giving up his right to confront and cross-examine witnesses at an evidentiary hearing where the State had to prove the alleged violation by a preponderance of the evidence. 45 N.E.3d at 1230. This court held that a breach of due process occurred in the absence of any evidence indicating that the probationer had received the advisement required by statute and our case law. *Id.* at 1232. Here, however, the record is not silent.

[9] During the initial hearing held on December 8, 2022, the trial court advised a group of probationers, including Sanders:

For those of you here for an initial hearing in connection with a petition to revoke a previously suspended sentence, please be advised that you have certain rights in connection with that proceeding. You have the right to have a hearing in which the state must prove the allegations against you by preponderance of the evidence. You have the right to receive the allegations against you in writing. You have the right to have the evidence against you disclosed to you. You have the right to [be] represented by an attorney and if [at] any time you cannot afford an attorney one will be appointed to represent you at public expense. You have the right to be represented at any hearing to be heard and to present evidence on your behalf. The court will assist you by issuing orders to witnesses to come to court and testify on your behalf. You have the right to confront and cross examine the witnesses against you. In the event the state does prove the allegations against you by preponderance of the evidence, the court may impose any or all of your previous sentence.

Transcript at 6. The court then asked Sanders individually if he had any questions about these rights—to which he replied, “uh no.” *Id.* at 7. Then, during the hearing held on December 27, Sanders was presented with and signed a waiver of rights form in the presence of his counsel.

[10] In short, the record is anything but silent—the evidence before us demonstrates that the court properly informed Sanders of his rights and he was aware he was

waiving those protections by admitting to the probation violation. Sanders has failed to establish a violation of his due process rights.

2. Denial of Continuance

[11] Sanders argues that the trial court abused its discretion when it denied his motion to continue the January 27 sentencing hearing. There is no evidence in the record, and Sanders does not argue, that he was entitled to a continuance as a matter of right, and so “the trial court’s decision is given substantial deference and is reviewable only for abuse of discretion.” *Laster v. State*, 956 N.E.2d 187, 192 (Ind. Ct. App. 2011) (quoting *Elmore v. State*, 657 N.E.2d 1216, 1218 (Ind. 1995)). As such, “there is always a strong presumption that the trial court properly exercised its discretion.” *Id.* An abuse of discretion occurs when the ruling is “clearly against the logic and effect of the facts and circumstances.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[12] Our Supreme Court has held that whether the trial court abused its discretion in denying a motion for continuance is “potentially a two-step inquiry.” *Ramirez v. State*, 186 N.E.3d 89, 96 (Ind. 2022). First is the question of whether the court evaluated the parties’ diverse interests that would be impacted by changing the schedule. *Id.* Second—even if the court did not properly balance the parties’ interests—we “assess whether the court’s denial resulted in prejudice.” *Id.*; see also *Vaughn v. State*, 590 N.E.2d 134, 136 (Ind. 1992) (finding that the basis for reversal requires a “determination of resulting prejudice”); *Evans v. State*, 855

N.E.2d 378, 386 (Ind. Ct. App. 2006) (specifying that defendants must show they were prejudiced because of the trial court’s denial of their motion), *trans. denied*.

[13] In the case at hand, Sanders claimed at the January 27 hearing that his attorney needed more time to prepare, a witness was unavailable, and he suffered from extreme vertigo. We address each of these arguments in turn.

[14] The record reveals that Sanders acquired a second attorney on the evening before the initial date of the sentencing hearing. Sanders claimed that his newest attorney needed additional time to prepare. His original attorney, however, remained on the case. The court granted a one-day continuance, which because of bad weather, effectively turned into three days. Though the State consented to the third request for an extension, the court had already twice continued the hearing. Even if the record does not establish whether the court weighed the parties’ interests, Sanders did not then, or now in this appeal, demonstrate resulting prejudice from one of his attorneys not having additional time to prepare. *See Fink v. State*, 469 N.E.2d 466, 470 (Ind. Ct. App. 1984) (noting lack of prejudice resulting from denial of request for a continuance so that a new attorney might prepare a defense), *reh’g granted on other grounds*, *Fink v. State*, 471 N.E.2d 1161 (Ind. Ct. App. 1984).

[15] Regarding the unavailable witness, Pastor Hall, Sanders’s description of him as “key” is insufficient to make a determination of prejudice. *See Arhelger v. State*, 714 N.E.2d 659, 667 (Ind. Ct. App. 1999) (describing a witness as “crucial” to

the defense was insufficient to show prejudice from the denial of the continuance). Nor did Sanders demonstrate to the court why the testimony of Pastor Hall was material to his defense. *See Macklin v. State*, 701 N.E.2d 1247, 1250 (Ind. Ct. App. 1998) (finding no abuse of discretion in part because the appellant did not show the materiality of the missing witness). Sanders suggests that Pastor Hall had knowledge of “his character and his efforts to help others in the community.” *Appellants Brief* at 14. The record reveals that four other pastors with knowledge of Sanders’s character and involvement in the community all testified to that effect at the sentencing hearing.

[16] As for Sanders’s claimed vertigo, the court was in the best position to make a determination about his condition. *See Terry v. Terry*, 313 N.E.2d 83, 91 (Ind. Ct. App. 1974) (“The trial judge is in a position to best view the parties, appraise their difficulties, if any, and to act accordingly.”). Further, Sanders did not provide the court with a written statement by a physician or hospital official regarding his illness. Ind. Code § 35-36-7-1(e) (requiring that a motion for a continuance based on the illness of a defendant be accompanied by oral testimony or a written statement by a physician or hospital official); *see also Harrison v. State*, 707 N.E.2d 767, 786 (Ind. 1999) (concluding that a petition for a continuance based on the illness of a defendant be supported by testimony or a written statement of a physician or hospital official). In sum, we do not believe the trial court acted against the logic and effect of the facts and circumstances.

3. Revocation of Probation

[17] Revocation of probation is a two-step process: the trial court must determine that a violation of probation occurred and, if a violation is proven, then the court must make a determination of whether the violation warrants revocation. *May v. State*, 58 N.E.3d 204, 206 (Ind. Ct. App. 2016). If the court concludes that the probationer violated the conditions of probation, it may decide to continue the individual on probation, with or without modifying or enlarging the conditions; extend the individual’s probationary period for not more than one year beyond the original probationary period; or order execution of all or part of the sentence that was suspended at the initial sentencing. I.C. § 35-38-2-3(h). One violation of the conditions of probation is enough to “support a probation revocation.” *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015). We review probation revocations for an abuse of discretion—i.e., we will reverse if the trial court’s decision is “clearly against the logic and effect of the facts and circumstances.” *Gaddis v. State*, 177 N.E.3d 1227, 1229 (Ind. Ct. App. 2021).

[18] Sanders argues that the trial court should have considered his remorse, his willingness to continue making payments on the restitution order, and his community involvement as some of the factors that weighed against the revocation of probation. The bottom line is that Sanders violated the terms of his probation when he committed the crimes of operating a vehicle with alcohol concentration equivalent to .15 or more and operating a vehicle while intoxicated endangering a person. While on probation, the payments he made fell far short of the amount needed to make progress on the order of restitution.

Sanders made little effort to find permanent employment and urged the court to allow him to return to a job that would have placed him in contact with felons, a violation of his probation. The probation officer reported to the court that Sanders viewed himself as a victim and repeatedly resisted “the conditions of probation laid out for him.” *Appendix* at 63. The officer feared that Sanders would reoffend and requested that he serve the suspended sentence at the DOC.

[19] In light of these circumstances, the trial court found “absolutely no redeeming values in [the] situation,” concluding that Sanders “was given an opportunity and . . . he chose not to take advantage of that opportunity.” *Transcript* at 65. One violation is sufficient to revoke probation, and the court did not abuse its discretion by doing so here and ordering Sanders to serve the previously suspended sentence.

[20] Judgment affirmed.

May, J. and Foley, J., concur.