

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

### ATTORNEY FOR APPELLANT

Mark A. Thoma  
Leonard, Hammond, Thoma & Terrell  
Fort Wayne, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Erica S. Sullivan  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Tyreoun D. Guy,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 30, 2023

Court of Appeals Case No.  
22A-CR-2324

Appeal from the Allen Superior  
Court

The Honorable Samuel R. Keirns,  
Magistrate

Trial Court Cause No.  
02D06-1509-F3-53

**Memorandum Decision by Judge Bailey**  
Judges Tavitas and Kenworthy concur.

**Bailey, Judge.**

## Case Summary

- [1] Tyreoun Guy appeals an order of the trial court that revoked his probation and required him to serve three years of his previously suspended sentence in the Indiana Department of Correction (“the DOC”). Guy presents the issue of whether the trial court abused its discretion in finding that Guy’s violation warranted revoking his probation. We affirm.

## Facts and Procedural History

- [2] On September 26, 2016, Guy pleaded guilty to Robbery, as a Level 3 felony,<sup>1</sup> and Corrupt Business Influence, a Level 5 felony.<sup>2</sup> He was sentenced to seven years in the DOC for the Level 3 felony, suspended to probation. He received a consecutive sentence of one year and 183 days for the Level 5 felony. *See Guy v. State*, No. 18A-CR-1338, 2018 WL 6056824, at \*1 (Ind. Ct. App. Nov. 20, 2018).
- [3] On March 14, 2018, the State filed a notice of probation violation, alleging that Guy had violated the terms of his probation by committing three misdemeanors. After conducting a hearing on May 8, 2018, the trial court found that Guy had violated the terms of his probation. The trial court revoked Guy’s probation and ordered that he be incarcerated for four years of his seven-

---

<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> I.C. § 35-45-6-2.

year suspended sentence, with three years of probation. *See id.* Guy appealed the revocation and sanction, and a panel of this Court affirmed the trial court's decision. *Id.*

[4] Guy was released from the DOC on February 18, 2022. On March 14, 2022, the State filed a notice of probation violation, alleging that Guy had failed to report for probation orientation. At a hearing conducted on July 7, 2022, Guy admitted to the allegation. Guy's counsel requested that Guy undergo a community corrections eligibility screening and advised the trial court that Guy was employed, was seeking additional employment, and had committed no new criminal offense. Counsel did not proffer mitigating evidence related to the failure to report to probation orientation. The trial court observed that Guy was ineligible for community corrections placement, revoked Guy's probation, and committed him to the DOC for a period of three years, with seventeen days credit time. On October 2, 2022, Guy obtained permission from this Court to pursue a belated appeal.

## Discussion and Decision

[5] Probation may be revoked where: (1) the person violated a condition of the probation during the probationary period; and (2) the petition to revoke probation was filed during the probationary period or before the earlier of one year after termination of probation or forty-five days after the State receives notification of the violation. *See* Ind. Code § 35-38-2-3(a). Because a probation revocation proceeding is civil in nature, the State need only prove the alleged

probation violation by a preponderance of the evidence. *Holmes v. State*, 923 N.E.2d 479, 485 (Ind. Ct. App. 2010). Proof of a single violation is sufficient to permit a trial court to revoke probation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*.

[6] Guy admits that he violated a condition of his probation, and he does not challenge the timing of the State’s petition to revoke. According to Guy, he “challenges the trial court’s revocation of his probation on the ground that the violation the court found did not warrant the full revocation of [his] probation.” Appellant’s Brief at 15.

[7] Where the court finds a person has violated a condition of probation, the court may: (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 the execution of all or part of the sentence that was suspended at the time of initial sentencing. *See* I.C. § 35-38-2-3(h). Trial courts enjoy broad discretion in adjudicating a probation violation. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). We review that decision only for an abuse of discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.* It is well within the trial court’s discretion to determine the conditions of probation and revoke it if the conditions are violated. *Id.* When a trial court exercises its grace by ordering probation rather than incarceration, the judge has considerable leeway in deciding how to proceed. *Id.*

[8] Guy violated a condition of his probation soon after it began by failing to report to his probation orientation. He has a history of violating the conditions of his probation.<sup>3</sup> We are not persuaded that the trial court’s decision was clearly against the logic and effect of the facts and circumstances.

[9] Affirmed.

Tavitas, J., and Kenworthy, J., concur..

---

<sup>3</sup> In his appellant’s brief, Guy has not specifically alleged that he was denied due process; however, he has asserted that the trial court “never really gave [him] an opportunity to present evidence that would explain and mitigate his technical violation.” Appellant’s Br. at 15. As Guy observes, “even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation.” *Woods v. State*, 892 N.E.2d 637, 640 (citing *United States v. Holland*, 850 F.2d 1048, 1051 (5th Cir.1988)). In *Woods*, the probationer made a specific request to present an explanation of his violation, which the trial court denied. Nonetheless, the denial did not constitute due process grounds for relief where the probationer failed on direct appeal or transfer to “make any attempt to explain why he violated the terms of his probation” or, “more importantly,” failed to “make an offer of proof to the trial court.” *See id.* at 642.