

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

Brian A. Karle
Ball Eggleston PC
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy J. Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael Lee Anthony Moffatt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No.
23A-CR-396

Appeal from the Tippecanoe
Superior Court

The Honorable Michael S.
Bergerson, Senior Judge

Trial Court Cause No.
79D02-1802-F4-3

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

- [1] Michael Moffatt appeals his sanction following the trial court’s revocation of his placement on probation. Moffatt raises one issue for our review, namely, whether the court abused its discretion when it ordered him to serve the balance of his previously suspended sentence in the Department of Correction (“DOC”). We affirm.

Facts and Procedural History

- [2] On April 25, 2018, Moffatt pleaded guilty to unlawful possession of a firearm by a serious violent felon, as a Level 4 felony.¹ The court entered judgment of conviction accordingly and sentenced Moffatt to six years, with two years at the DOC, two years on community corrections, and two years suspended to supervised probation.
- [3] Moffatt began serving his term on community corrections on August 24, 2019. On August 29, 2020, Moffatt’s reporting officer filed a violation report. In that report, the officer asserted that Moffatt had escaped from his placement. *See id.* at 93. Accordingly, the State filed a motion to revoke Moffatt’s placement. At a hearing on the State’s motion, Moffatt admitted to the allegation, and the court found that Moffatt had violated the terms of his placement for having

¹ Ind. Code § 35-47-4-5(c).

committed escape. The court then revoked Moffatt's placement and ordered him to serve the remainder of his community corrections sentence at the DOC.

[4] Moffatt completed the executed portion of his sentence and began serving his term on probation on August 26, 2022. On October 4, the State filed a petition to revoke his placement. In that petition, the State alleged that Moffatt had "consumed or possessed a controlled substance, to wit: Methamphetamine and Amphetamine" on September 22; that he had failed to report to probation for scheduled appointments on September 21 and 26; that he had failed to report to court services on September 27; and that he had failed to notify probation of a change in residence. *Id.* at 129.

[5] The court held a hearing on the State's notice on February 16, 2023. At the hearing, the court asked Moffatt if he admitted to the "violations alleged in the petition" to revoke that the State had filed on October 4, 2022. *Tr.* at 15. Moffatt responded: "Yes, Your Honor." *Id.* The court then asked Moffatt how he had violated the terms of his probation, and Moffatt stated that he had failed a drug test when he was "under the influence of methamphetamines." *Id.* at 16.

[6] At the conclusion of the hearing, the court found that Moffatt had violated the terms of placement for having "consumed or possessed a controlled substance, to wit, methamphetamine or amphetamine." *Id.* at 18. The court then found that Moffatt had "used . . . [e]very one of [his] chances" and ordered Moffatt to complete the balance of his previously suspended sentence in the DOC. *Id.* at

20. Thereafter, the court entered its written order in which it found that Moffatt had violated the terms of his probation for having consumed or possessed methamphetamine or amphetamine, failed to report to probation for two scheduled appointments, failed to report to court services, and failed to notify probation of a change in residence. *See* Appellant’s App. Vol. 2 at 146. The court then reiterated its order that Moffatt serve the balance of his previously suspended sentence in the DOC. This appeal ensued.

Discussion and Decision

[7] Moffatt appeals the trial court’s order that he serve the balance of his previously suspended sentence in the DOC. Probation is a matter of grace left to trial court’s discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Upon finding that a defendant has violated a condition of his probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h)(3) (2022). We review the trial court’s sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs “only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances” before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (per curiam). We will not reweigh the evidence or reconsider witness credibility. *Griffith v. State*, 788 N.E.2d 835, 839-40 (Ind. 2003). Rather, we consider only the evidence most

favorable to the trial court’s judgment to determine if there was substantial evidence of probative value to support the court’s ruling. *Id.*

[8] On appeal, Moffatt first contends that a “conflict exists between the trial court’s written order and the verbal findings made at the revocation hearing.”

Appellant’s Br. at 9. In particular, Moffatt asserts that the court identified several violations in its written order—having consumed a controlled substance, having failed to report to probation on two occasions, having failed to report to court services on one occasion, and having failed to notify probation of a change in address, but only one violation in its verbal order—having consumed a controlled substance. Moffatt contends that the evidence only “supports the unambiguous verbal finding” and that the “written order should be disregarded[.]” *Id.*

[9] However, contrary to Moffatt’s assertions, the record supports the court’s written finding that he committed multiple violations. Indeed, in its petition to revoke Moffatt’s placement, the State alleged that he had violated the terms of probation when he consumed methamphetamine, failed to report to probation on two occasions, failed to report to court services, and failed to notify probation of a change in address. *See* Appellant’s App. Vol. 2 at 129. Then, at the hearing on the State’s petition, Moffatt affirmed that he “kn[e]w” why he was at court and that he had “seen a copy of the petition.” Tr. at 11-12. The court specifically asked Moffatt if he admitted to the “violations alleged” in the State’s October 4, 2022, petition. *Id.* at 15. Moffatt responded: “Yes, Your Honor.” *Id.* In other words, it is clear that Moffatt knew of all of the

allegations in the petition and admitted to all of them, not just the allegation that he had used methamphetamine. The evidence supports the court's written finding that Moffatt violated his probation on multiple grounds.

[10] Moffatt next contends that the court abused its discretion when it ordered him to serve the balance of his previously suspended sentence. The majority of Moffatt's argument is premised on his allegation that a "single failed drug screen" does not warrant the imposition of a two-year term. Appellant's Br. at 10. He also asserts that that he "has a history of lifelong learning difficulties," that he has a traumatic brain injury that "undoubtedly resulted in exacerbated cognitive and memory deficits," and that he "has struggled with mental illness[.]" *Id.* at 13. He further contends that the court's sanction constitutes an abuse of discretion because the State only asked for him to serve one year instead of two. And he maintains that, rather than serving a two-year sentence, the court should place him back on probation "with an order to receive substance abuse treatment[.]" *Id.* at 14. In short, Moffatt asks this Court for leniency in light of his circumstances. However, Moffatt's contentions amount to a request for this Court to reweigh the evidence, which we cannot do.

[11] The trial court's sanction is supported by substantial evidence. First, as discussed above, the record supports the court's finding that Moffatt committed multiple violations of his probation, not just one. But even if it did not, it is well settled that "[p]roof of a single violation is sufficient to permit a trial court to revoke probation." *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021). And, here, Moffatt has squandered multiple prior opportunities to avoid

incarceration in the DOC. As a result of prior offenses, Moffatt has had his placement on probation revoked three times. *See* Appellant’s App. Vol. 2 at 58. In addition, after Moffatt was placed on community corrections for the instant offense, he escaped, which resulted in the court revoking his placement and ordering him to serve the balance of that term in the DOC. Further, Moffatt had only been on probation for approximately one month when he committed multiple violations of his placement. That evidence supports the court’s conclusion that Moffatt had “used” up “[e]very one of [his] chances” and that he has a “disregard for regular rules.” Tr. at 20-21. We therefore hold that the court’s order that Moffatt serve the balance of his previously suspended sentence was well within the court’s discretion. We affirm the court’s judgment.

[12] Affirmed.

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