

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dennis W. Toomey, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 23, 2023

Court of Appeals Case No.
23A-CR-679

Appeal from the Hamilton
Superior Court

The Honorable William J. Hughes,
Judge

Trial Court Cause No.
29D03-1406-FB-4836

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Dennis Toomey repeatedly violated the terms of his probation and work release by testing positive for illegal drugs, committing a new felony offense, and leaving the State of Indiana without permission. In response, the trial court ordered Toomey to complete the suspended portion of his sentence, 6 years, with the Indiana Department of Correction (DOC). Toomey contends that the trial court abused its discretion by ignoring drug treatment as an alternative sanction. Finding no abuse of the trial court's discretion, we affirm.

Facts

- [2] Toomey plead guilty to dealing in a narcotic drug, a Class B felony, in 2014. The trial court sentenced him to 18 years imprisonment, comprised of 12 years executed and six years suspended, with a two-year probationary period following the executed sentence.
- [3] While in prison, Toomey completed the purposeful incarceration program, a holistic therapeutic program composed of several hundred hours of therapy and support group meetings. For this, the trial court in April 2016 modified his sentence to 18 years imprisonment, with 7 years executed and 11 years suspended to probation. The court also ordered Toomey to serve the balance of his executed sentence as a direct commitment to the Hamilton County Community Corrections work release program. In December 2016, the court modified his sentence again to 18 years imprisonment, with 6 years executed and 12 years suspended to probation.

- [4] But in late 2017, the State filed its first “Notice of Non-Compliance with Community Corrections” alleging Toomey had violated the terms of his work release program. It accused Toomey of testing positive for amphetamine and methamphetamine during a urine screen. Although, with the agreement of the trial court, the State dismissed this first notice, it subsequently filed two more notices of violations in short order. The alleged violations ranged from positive drug tests to Toomey’s arrest on multiple felony charges, including domestic battery and intimidation.
- [5] Toomey admitted to the allegations and plead guilty to intimidation as a Level 6 felony. Accounting for these violations, the trial court revised Toomey’s sentence to 18 years, with 12 years executed at DOC and six years suspended to probation. The terms of Toomey’s probation were standard. He was to comply with all applicable laws, cooperate with his probation officers, and refrain from illegal drugs, among other requirements. App. Vol. II, pp. 139-141.
- [6] The State filed three notices alleging probation violations in 2022. Although the State dismissed one, Toomey admitted to the allegation in the remaining two, a positive drug test and leaving Indiana without permission, respectively. At a hearing, Toomey offered evidence for why the trial court should not revoke his probation. He also offered an alternative to probation revocation: his recent acceptance into a supervised, long-term residential drug and alcohol facility through the Wheeler Mission. Toomey also testified to his extensive experience with imprisonment and inability to break the cycle of drugs and criminal activity he found himself in.

[7] Ultimately, the trial court revoked Toomey's probation, ordering the remainder of his 6-year suspended sentence served with the DOC. Toomey appeals this decision.

Discussion and Decision

[8] Probation is a "matter of grace left to trial court discretion." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). We will reverse the trial court's decision to revoke probation only for an abuse of that discretion. *Id.* "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law." *Id.*

[9] Probation revocation is a two-step process. "First, the trial court must make a factual determination that a violation of a condition of probation actually occurred." *Prewitt*, 878 N.E.2d at 188. "Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation." *Id.* The appropriateness of any sanction issued by the trial court "depend[s] upon the severity of the defendant's probation violation." *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). As Toomey admitted his probation violations, he challenges only the trial court's sanction.

[10] The trial court did not abuse its discretion in revoking Toomey's probation. The terms of his probation were straightforward and simple. He was, in part, to refrain from illegal drug use, cooperate with his probation officers, and not break the law. Toomey failed at each of these tasks. He lied to his probation officer and used illegal drugs. He was charged with several felony offenses,

specifically, domestic battery and intimidation. And he left the State of Indiana without permission. These violations more than adequately justify the revocation of Toomey's probation. *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005) ("a single violation of the conditions of probation is sufficient to support the decision to revoke probation").

[11] Lastly, the trial court was well within its discretion to reject Toomey's suggestion of an alternative treatment program rather than an executed sentence. Toomey's violations and pattern of conduct proves his unsuitability for probation. Accordingly, the existence of an alternative to the reimposition of his sentence does not tip the scales towards relief here. See *Comer v. State*, 936 N.E.2d 1266, 1269 (Ind. Ct. App. 2010) ("The consideration and imposition of any alternative to incarceration are matters of grace left to the discretion of the trial court.") (internal quotation marks omitted).

[12] Affirmed.

Altice, C.J., and Kenworthy, J., concur.