

## 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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### ATTORNEY FOR APPELLANT

Amanda O. Blackketter  
Blackketter Law, LLC  
Shelbyville, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
  
Myriam Serrano  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Danny I. Toler,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

March 23, 2022

Court of Appeals Case No.  
21A-CR-2428

Appeal from the Decatur Superior  
Court

The Honorable Matthew D.  
Bailey, Judge

Trial Court Cause No.  
16D01-1310-FB-686

**Crone, Judge.**

## **Case Summary**

- [1] Danny I. Toler appeals the trial court's revocation of his probation. The sole restated issue presented for our review is whether the trial court abused its discretion when it ordered him to serve three years of his previously suspended sentence in the Indiana Department of Correction (DOC). Finding no abuse of discretion, we affirm.

## **Facts and Procedural History**

- [2] On August 14, 2013, the State charged Toler with class B felony dealing in a narcotic drug, class D felony obtaining or attempting to obtain a legend drug by fraud, class A misdemeanor welfare fraud, and class A misdemeanor possession of marijuana. On December 12, 2013, pursuant to a plea agreement, Toler pled guilty to dealing in a narcotic drug and welfare fraud (Cause 686). The State dismissed the remaining charges. The trial court sentenced Toler to ten years on his dealing conviction, with three years executed in the DOC, three years on home detention, and four years suspended to probation. On his welfare fraud conviction, the trial court ordered him to serve ninety days in the Decatur County Jail concurrent to his dealing conviction.
- [3] After completing the executed portion of his sentence, Toler began serving three years on home detention. In January 2016, the State filed a petition to revoke Toler's home detention after he tested positive for methamphetamine. Following a hearing, the trial court revoked his home detention and ordered him to serve those three years of his sentence in the DOC.

- [4] After Toler completed his sentence in the DOC, he began his probationary term. As a condition of his probation, Toler had to submit to drug screens, could not possess, consume, or test positive for any illegal substance, and could not commit any criminal acts. Appellant's App. Vol. 2 at 51. On January 6, 2020, the State filed a petition for revocation of probation, alleging that Toler committed a new offense and committed a technical violation. Following a hearing, the trial court continued Toler on probation under the original terms of the plea agreement. *Id.* at 69.
- [5] In July 2020, the State charged Toler with level 6 felony possession of methamphetamine, level 6 felony unlawful possession of a hypodermic needle, level 6 felony maintaining a common nuisance, and class A misdemeanor possession of paraphernalia. He also tested positive for methamphetamine, amphetamine, and THC. The State filed another petition for revocation of probation. While this petition was pending, the State charged Toler with level 6 felony theft. In November 2020, a supplemental petition for revocation of probation was filed alleging that Toler violated the terms and conditions of his probation by committing the new crime of level 6 felony theft.
- [6] A factfinding hearing was held on July 7, 2021. Toler moved to withdraw his previous denials of the alleged offenses and admitted to violating his conditions of probation by "getting arrested and failing drug screens." Tr. Vol. 2 at 11-12. The trial court took his admission under advisement. On October 7, 2021, the trial court held another factfinding hearing. During the hearing, Toler admitted that this was not his first probation violation and that he had been previously

sanctioned for violating the terms of his community corrections placement. Toler's probation officer testified that he was not a "good candidate for a continued probation." *Id.* at 21. At the conclusion of the hearing, the trial court found that Toler was not a "good candidate for continued probation supervision" due to all the "violations" and "the arrests while on probation." *Id.* at 32. Accordingly, the trial court revoked Toler's probation and ordered him to serve three years of his previously suspended sentence in the DOC. This appeal ensued.

## Discussion and Decision

[7] Toler appeals the trial court's order revoking his probation. "Probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* We review an appeal from a trial court's probation determination and sanction for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

[8] Probation revocation is a two-step process. "A revocation hearing is in the nature of a civil proceeding, and the alleged violation only needs to be

established by a preponderance of the evidence.” *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). The trial court must first make a factual determination that a violation of a condition has occurred. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019). If a violation of a condition is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* “However, where, as here, a probationer admits to the violations, the trial court can proceed immediately to the second step of the inquiry and determine whether the violation warrants revocation.” *Id.* In determining whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.* Once a violation has been found and revocation of probation is warranted, the trial court may impose one or more of the following sanctions: (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 execution of all or part of the sentence that was suspended at the time of initial sentencing. *Id.* (citing Ind. Code § 35-38-2-3(h)).

[9] Here, Toler admitted to violating the terms and conditions of his probation in Cause 686, and therefore the trial court properly moved straight to the second step of the inquiry and held a sentencing hearing to determine the proper

sanction for the violation.<sup>1</sup> While Toler acknowledges that he hardly has “clean hands,” Appellant’s Br. at 9, he complains that the trial court’s decision that he execute three years of his previously suspended sentence is too harsh a sanction. However, it is well settled that the court may properly order execution of a suspended sentence upon a finding of a single violation of probation. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. We remind Toler that probation is a matter of grace, not a right. *Prewitt*, 878 N.E.2d at 188. In light of Toler’s admitted multiple violations of his probation in Cause 686, his prior violation of his placement in community corrections in this same cause, his admitted continuing drug abuse issues, and his probation officer’s testimony, the trial court was well within its discretion to determine that Toler was not a good candidate to continue on probation. We therefore conclude that the trial court did not abuse its discretion when it ordered Toler to serve three years of his previously suspended sentence.

[10] Affirmed.

Bradford, C.J., and Tavitias, J., concur.

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<sup>1</sup> Toler asserts that “it appears” that at the sentencing hearing, both the prosecutor and defense counsel “mistakenly believed that probable cause was the correct burden of proof” for a probation violation and not “preponderance of the evidence.” Appellant’s Br. at 7. However, Toler had already admitted to violating his probation prior to the sentencing hearing, and thus the State was not required to establish a violation by a preponderance of the evidence. Indeed, because Toler admitted to violating the terms and conditions of his probation, we need not address his challenge to the sufficiency of the evidence to support the trial court’s finding that he violated his probation. To the extent that Toler’s assertion may be more properly characterized as a challenge to the sufficiency of the factual basis supporting his admission, that claim is not available on direct appeal. *See Kirkland v. State*, 176 N.E.3d 986, 988 (Ind. Ct. App. 2021) (defendant challenging validity of admission to probation violation must do so through petition for post-conviction relief and not direct appeal).