MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Anthony Runyan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 19, 2022

Court of Appeals Case No. 21A-CR-2769

Appeal from the Vermillion Circuit Court

The Honorable Jill D. Wesch, Judge

Trial Court Cause No. 83C01-1204-FB-8

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Anthony Runyan (Runyan), appeals the trial court's Order imposing five years of his previously suspended sentence after he violated the terms of his probation.

[2] We affirm.

ISSUES

[3] Runyan presents this court with two issues, which we restate as:

(1) Whether the trial court abused its discretion by imposing the remainder of his previously suspended sentence; and

(2) Whether remand is necessary to clarify the trial court's Order.

FACTS AND PROCEDURAL HISTORY

[4] In 2005 Runyan pleaded guilty to Class B felony manufacturing methamphetamine and received a sentence of ten years with the Department of Correction (DOC), to be served consecutively to Runyan's four-year sentence for Class C felony escape imposed in an unrelated cause. The trial court recommended that Runyan receive methamphetamine addiction treatment. On September 25, 2009, the trial court authorized Runyan to participate in a community transitions program through community corrections, which he successfully completed on April 5, 2010. On June 13, 2011, the State charged Runyan with Class A misdemeanor battery resulting in bodily injury. Runyan

pleaded guilty, and on August 29, 2011, the trial court sentenced him to one year, with 205 days suspended to probation.

[5] On April 5, 2012, while Runyan was still on probation for his battery offense, the State filed an Information in Cause Number 83C01-1204-FB-000008 (Cause -08), charging Runyan with Class B felony manufacturing methamphetamine, Class D felony possession of methamphetamine, and Class D felony dumping controlled substance waste. On April 24, 2012, Runyan was unsatisfactorily discharged from probation for his battery conviction. On March 11, 2013, Runyan pleaded guilty in Cause -08 to Class B felony manufacturing methamphetamine pursuant to an agreement with the State that it would dismiss the remaining Class D felony charges and recommend a sentence of twenty years in the DOC, with eleven years suspended to probation. On May 20, 2013, the trial court sentenced Runyan according to the terms of his plea agreement. On April 27 and May 11, 2015, Runyan wrote letters to the trial court informing the court that he had completed the Clean Lifestyle is Freedom Forever (CLIFF) program at the DOC, requesting that the trial court allow him to participate in a community transition program, and promising that if he were given the community transition he sought, he "would not let the court down." (Appellant's App. Vol. II, p. 107).

[6] On October 15, 2015, Runyan began his probation in Cause -08. As part of Runyan's probation, he agreed to refrain from the consumption of controlled substances and to submit to random drug testing. On August 7, 2018, the State filed its first petition to revoke Runyan's probation in Cause -08, alleging that

Runyan had tested positive on August 3, 2018, for amphetamine and methamphetamine. The State further alleged in its petition to revoke probation that later in the day on August 3, 2018, the probation department had visited Runyan's home to administer a second drug test and that the second test showed that Runyan was positive for amphetamine and methamphetamine at higher levels than he had exhibited earlier that day. Runyan was arrested on the probation revocation allegations but posted bond and was released. On August 20, 2018, Runyan admitted to violating the terms of his probation in Cause -08 by testing positive for controlled substances. The trial court set Runyan's probation revocation disposition for a hearing on October 22, 2018.

[7] On October 10, 2018, the State filed a second petition to revoke Runyan's probation in Cause -08, alleging that on September 28, 2018, Runyan had been subjected to a random drug screen and that he had tested positive again for amphetamine and for methamphetamine. On October 21, 2018, Runyan was arrested on these probation revocation allegations. On December 7, 2018, Runyan admitted the allegations in the State's second petition, and the trial court revoked Runyan's probation. The trial court ordered Runyan to serve six years of his previously suspended sentence with the DOC. The trial court recommended Purposeful Incarceration to address Runyan's substance abuse. Runyan was to be returned to probation after execution of his probation revocation sanction. On February 21, 2020, Runyan successfully completed the Purposeful Incarceration program at the DOC through group therapies and participation in peer addictions groups such as Alcoholics Anonymous and

Narcotics Anonymous. Runyan's discharge summary from the program indicated that he understood that he would "have to change people, places, and things . . . to be successful in recovery as well as being able to positively deal with difficult issues that may arise in his life." (Appellant's App. Vol. II, p. 161). Runyan was returned to probation on April 15, 2021.

[8] On September 2, 2021, the State filed its third petition to revoke Runyan's probation in Cause -08, alleging that Runyan had violated his probation by testing positive for methamphetamine (45.7 ng/mL), amphetamine (6.1 ng/mL), and THC (0.5 ng/mL). On November 4, 2021, Runyan admitted the allegations contained in the State's third petition to revoke. At the same hearing, the trial court heard evidence and argument on possible sanctions for the revocation. Runyan argued for home detention so that he could continue to work, participate in a substance abuse program, and assist his fiancée, who was scheduled for major back surgery. Runyan testified under oath that his most recent positive drug screen results had been a "mishap" and that "it was a bachelor party and . . . I went up to a gentleman's club, okay, and then it proceeded from there." (Transcript p. 31). Runyan's probation officer testified that the drug test that resulted in the State filing the instant petition to revoke was the first random drug screen Runyan had received after beginning probation again on April 15, 2021.

[9] The trial court found that Runyan had violated the terms of his probation and imposed the remaining previously suspended five years of his sentence, observing that although this was a "technical violation", Runyan had received

multiple opportunities, including the CLIFF program, but that he had multiple probation violations in this case. (Tr. p. 38). The trial court concluded that Runyan had demonstrated that he could not be successful on probation. On November 10, 2021, the trial court issued its written Order revoking Runyan's probation, finding in relevant part as follows:

> Defendant understands the allegations to which he has admitted to; the rights the Defendant is waiving by his admission; *the possible modification of sentence*; the admission was freely, knowingly and voluntarily made; the plea is accurate; and there is a factual basis for the Defendant's admission. The [c]ourt accepts the parties' agreement and finds the Defendant guilty of violating the terms of probation by testing positive for controlled substances.

(Appellant's App. Vol. II, p. 178) (emphasis added).

[10] Runyan now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Revocation Sanction*

A. *Standard of Review*

[11] Runyan challenges the trial court's Order that he serve the remaining five years of his previously suspended sentence. It is well-settled that probation is a matter of grace which is left to the trial court's discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). If a trial court revokes a person's probation, it may continue the person on probation, extend the probationary period for not more than one year, or order the execution of all or part of the previously suspended sentence. Ind. Code § 35-38-2-3(h). The trial court has considerable

leeway in deciding how to proceed in probation matters. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). If this were not so, trial court judges would be less inclined to order probation for defendants. *Id*. In light of this considerable leeway, "a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard." *Id*. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*.

B. *Sanction*

[12] Here, Runyan was on probation for battery when he committed the Class B felony manufacturing methamphetamine offense which resulted in him receiving a sentence of twenty years, with eleven years suspended to probation. After serving the initially executed portion of his sentence, Runyan was released to begin probation. In 2018, Runyan tested positive for methamphetamine and amphetamine on August 3 and September 28, 2018. On August 3, 2018, Runyan tested positive twice, registering higher levels of methamphetamine and amphetamine later in the day, supporting an inference that he had ingested more controlled substances after having tested positive earlier in the day. Runyan's probation was revoked, and he received a sanction of six years for the revocation. While serving that time in the DOC, Runyan completed the CLIFF program, participated in group therapies, and participated in peer 12-step groups to address his substance abuse. After Runyan was released again to probation after having executed time in the DOC and completing further substance abuse treatment, within six months of his release, Runyan tested

positive again for methamphetamine, amphetamine, and THC in the first random drug screen he was administered. Runyan's explanation for his latest probation violation was that it was a "mishap" caused by going to a bachelor party at a strip club. (Tr. p. 31). Given that Runyan had previously violated his probation in his battery case, he violated his probation multiple times in this matter, he violated again despite having already received back-up time and substance abuse treatment, and given the reason provided for his latest violation, we cannot conclude that the trial court abused its considerable discretion when it imposed the remaining five years of Runyan's sentence.

[13] Nevertheless, Runyan argues that his "technical violation" of a failed drug screen did not merit the trial court's sanction, he had tested positive at low levels, methamphetamine addiction recovery is particularly difficult to sustain, and that there was positive evidence regarding his recovery, life, and employment presented to the trial court. (Appellant's Br. p. 11). As a result, Runyan argues that he deserved something less than five years with the DOC, citing, among other authority, *Johnson v. State*, 62 N.E.3d 1224, 1230-32 (Ind. Ct. App. 2016), wherein this court found that the trial court had abused its discretion in imposing a four-year sentence following a revocation of his community corrections placement, given Johnson's previous success on probation and work release, the relatively minor nature of his violations, and his low mental functioning. However, what differentiates Runyan's case from the authority he cites on appeal is that his probation in this matter had already been revoked once, he had already been returned to the DOC where he received

additional substance abuse treatment, and he had already been afforded the grace of having a second opportunity to avoid having to serve the remaining five years of his sentence in prison. Accordingly, we find no abuse of the trial court's discretion.

II. *Written Order*

[14] The trial court's written Order contains a reference to "the possible modification of sentence." (Appellant's App. Vol. II, p. 178). Runyan claims that this was an error in the trial court's Order that created ambiguity about whether he had waived his right to petition the court to modify his sentence and that remand is necessary to correct the error. When faced with a discrepancy between a trial court's oral and written sentencing statement, we examine both statements to discern the trial court's intent, rather than assuming the accuracy of the trial court's oral statement. *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007). We have the option of crediting the statement that accurately pronounces sentence or of remanding for correction. *Id*.

[15] Our examination of the transcript of the November 4, 2021, hearing and the trial court's written Order reveals that, prior to accepting Runyan's admission to the alleged violation, Runyan's attorney informed the trial court that Runyan would admit the violation and "would leave sentencing to the [c]ourt's discretion." (Tr. p. 21). The trial court asked Runyan if he understood what his attorney had said, and Runyan confirmed that he had. The transcript contains no other reference to sentence modification. Given that this was the only reference at the November 4, 2021, hearing to a change in Runyan's

sentence, it is clear that the trial court's written Order merely reflected that Runyan understood that the trial court might modify his sentence as a result of Runyan's admission to the probation violation. There is nothing in the transcript suggesting that Runyan waived any right to petition to modify his sentence, if indeed he is entitled to do so. Therefore, remand is not necessary, as we credit the clear intention of the trial court as supported by the transcript. *See id*.

CONCLUSION

[16] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it imposed five years of Runyan's previously suspended sentence and that remand is not necessary to correct the trial court's written Order.

[17] Affirmed.

[18] May, J. and Tavitas, J. concur