

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tyriek Burnett,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 31, 2022

Court of Appeals Case No.
21A-CR-2878

Appeal from the Allen Superior
Court

The Honorable Samuel R. Keirns,
Judge

Trial Court Cause No.
02D04-2103-F6-356

Pyle, Judge.

Statement of the Case

- [1] Tyriek Burnett (“Burnett”) appeals the revocation of his probation, arguing that the trial court abused its discretion by ordering him to serve his previously suspended sentence. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court abused its discretion by ordering Burnett to serve his previously suspended sentence.

Facts

- [3] In March 2021, the State charged Burnett with Level 6 felony domestic battery and Class A misdemeanor resisting law enforcement. The trial court initially released Burnett on bond and placed him on a monitored conditional release. In April 2021, the trial court revoked Burnett’s bond after Burnett had failed to comply with the terms of the conditional release.
- [4] On May 6, 2021, Burnett pled guilty to the two charges against him. As part of the plea agreement, Burnett and the State agreed that Burnett would be sentenced to two (2) years for the Level 6 felony conviction and one (1) year for the Class A misdemeanor conviction and that these sentences would be suspended to probation and served concurrently. The trial court sentenced Burnett pursuant to the plea agreement.

[5] A few weeks later, on May 27, 2021, the State filed a probation revocation petition. The petition alleged that Burnett had violated probation by failing to report and maintain contact with probation supervision. During the probation hearing, Burnett admitted that he had violated probation as alleged. The trial court returned Burnett to probation with an additional condition of “zero tolerance.” (Tr. Vol. 2 at 8) (App. Vol. 2 at 67, 68). The trial court warned Burnett that “[t]his [wa]s [Burnett’s] last chance” and that “[i]f [he] stop[ped] reporting to probation again, or ha[d] any other violations, [he] [would be] going to prison.” (Tr. Vol. 2 at 8). When the trial court asked Burnett if he understood, Burnett replied, “Yeah, I promise. I really, I promise.” (Tr. Vol. 2 at 8).

[6] As part of Burnett’s probation, he was required to receive counseling and treatment at Park Center. During an October 5, 2021 probation meeting, Burnett’s probation officer, Ashley Bretes (“Probation Officer Bretes”), discussed Burnett’s noncompliance with his treatment plan and appointments at Park Center. When Probation Officer Bretes informed Burnett that he would have to report weekly to probation until he was back in compliance with treatment, Burnett “yelled [and] screamed” at Probation Officer Bretes and refused to leave her office. (Tr. Vol. 2 at 24). Fellow probation officers intervened to escort Burnett out of the office, and Burnett repeatedly threatened to “beat all of [their] fucking asses.” (Tr. Vol. 2 at 30). The following day, Burnett left Probation Officer Bretes “very hostile” voicemails, telling her “fuck you” and that he would “rather sit in jail[.]” (Tr. Vol. 2 at 25). Additionally,

Burnett threatened that Probation Officer Bretes “better do what [he] say[s][.]” (Tr. Vol. 2 at 25).

[7] Thereafter, the State filed a second probation revocation petition, which it then amended. The second amended revocation petition alleged that Burnett had violated probation by failing to maintain good behavior, making threats of violence against probation staff members, and failing to comply with required treatment at Park Center.

[8] Following a probation revocation hearing, the trial court determined that Burnett had violated his probation as alleged and ordered Burnett to serve his previously suspended sentence. Burnett now appeals.

Decision

[9] Burnett does not challenge the revocation of his probation. Instead, Burnett argues that the trial court abused its discretion by ordering him to serve his previously suspended sentence.¹ We disagree.

[10] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke

¹ We note that Burnett requests to have this Court review the imposition of his previously suspended sentence under the Appellate Rule 7(B) analysis for an inappropriate sentence. We decline his request because our appellate courts have made clear that the imposition a sentence as a result of probation revocations is not subject to a Rule 7(B) analysis. See *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007 (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*)).

probation if the conditions are violated. *Id.*; *see also* IND. CODE § 35-38-2-3(a). Indeed, violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Upon determining that a probationer has violated a condition of probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” I.C. § 35-38-2-3(h)(3). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Prewitt*, 878 N.E.2d at 188. “If this discretion were not given to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.* As a result, we review a trial court’s sentencing decision from a probation revocation for an abuse of discretion. *Id.* (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[11] The record before us reveals that the trial court had a sufficient basis for its decision to order Burnett to serve his previously suspended sentence. Here, after the State had charged Burnett with Level 6 felony domestic battery and Class A misdemeanor resisting law enforcement in March 2021, the trial court released Burnett on bond. Less than one month later, the trial court revoked Burnett’s bond after he had failed to comply with the terms of the conditional release. Then, in May 2021, Burnett entered into a plea agreement in which the parties agreed that Burnett would be sentenced to an aggregate term of two

years that were fully suspended to probation. A few weeks after being placed on probation, the State filed a probation revocation petition, alleging that Burnett had violated probation by failing to report and maintain contact with probation supervision. After Burnett admitted that he had violated probation, the trial court showed Burnett leniency by returning him to probation while warning Burnett that he was subject to a condition of zero tolerance. Within a few months, Burnett engaged in behavior that led to this second probation revocation petition. Specifically, Burnett failed to comply with required treatment, failed to maintain good behavior when he screamed at Probation Officer Bretes and left her hostile voicemails, and threatened violence against other probation officers.

[12] Based on the record before us, we conclude that the trial court did not abuse its discretion by ordering Burnett to serve his previously suspended sentence. For the foregoing reasons, we affirm the trial court's order revoking Burnett's probation and ordering him to serve his previously suspended sentence.

[13] Affirmed.

Robb, J., and Weissmann, J., concur.