

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Janet Lynn Thompson  
Hoover Hull Turner LLP  
Indianapolis, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Jodi Kathryn Stein  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Stephen K. Bolin,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 20, 2023

Court of Appeals Case No.  
22A-CR-2525

Appeal from the Vermillion Circuit  
Court

The Honorable Jill D. Wesch,  
Judge

Trial Court Cause No.  
83C01-1907-F6-114

**Memorandum Decision by Judge Brown**  
Judges Bailey and Weissmann concur.

**Brown, Judge.**

[1] Stephen Bolin, Jr., appeals the revocation of his probation and the sanction imposed by the trial court. We affirm.

### *Facts and Procedural History*

[2] On July 5, 2019, the State charged Bolin with: Count I, failure to reside at sex offender registered address or location as a level 6 felony; Count II, theft as a class A misdemeanor; Count III, theft as a class A misdemeanor; and Count IV, theft as a level 6 felony. The State also alleged he was an habitual offender. On March 7, 2022, pursuant to a plea agreement, Bolin pled guilty to Counts I through III, Count IV and the habitual offender allegation were dismissed, and the trial court sentenced him to a total of 1,460 days with 865 days suspended and placed him on probation for 858 days.

[3] On July 18, 2022, under cause number 79D04-2207-F6-746 (“Cause No. 746”), Bolin “receiv[ed] charges in the Tippecanoe Superior Court 4.” Transcript Volume II at 15. On July 26, 2022, the State filed a petition to revoke his probation, claiming that Bolin had violated the terms of his probation when he:

Received charges in the Tippecanoe Superior Court 4 for: Failure of a Sex or Violent Offender to Possess Identification, a Level 6 Felony. On or about July 18, 2022, in Tippecanoe County, State of Indiana, Stephen Keith Bolin Jr., a sex offender who is a resident of Indiana and who is required to register under IC 11-8-8, did knowingly or intentionally fail to obtain and keep in his possession a valid driver[’]s license or state issued identification card that contains the offender’s current address and current physical description.

Appellant’s Appendix Volume II at 16.

[4] On September 29, 2022, the court held a hearing on the State’s motion to revoke his probation at which Bolin testified that he had previously pled guilty to the charge in Cause No. 746 and admitted violating his probation. The prosecutor laid a factual basis for the violation. Bolin testified that he lost his identification, “explained that to the police officers . . . and they still turned around and filed charges,” he “didn’t . . . knowingly and intentionally [do] it but, yes, [he] did violate [his] probation by losing [his] ID,” that his “intention . . . when [he] lost [his] ID was not for [him] to not continue to have [his] ID,” and he did not realize he “could go down to the DMV and just turn around and get a photocopy and them [sic] send [him] another copy of [his] photo ID.” Transcript Volume II at 23, 28, 29.

[5] The court entered an order which provided:

The Court finds the Defendant guilty of violating the terms of probation by being charged with a new crime in 79D04-2207-F6-000746. The Court revokes 858 days. The Court orders that 365 days be executed in the Vermillion County Jail. The Defendant served 1 actual day prior to disposition and shall be given credit and good time credit for time served. After the completion of the executed portion of this sentence, the Defendant shall return to probation under the same terms and conditions as originally imposed for the remaining 493 days.

Appellant’s Appendix Volume II at 23.

### *Discussion*

[6] Bolin concedes that he violated his probation but argues the court violated due process in not issuing an adequate, written sentencing statement and abused its

discretion in ordering that he serve 365 days of his previously-suspended sentence.

[7] Ind. Code § 35-38-2-3(h), which sets forth a trial court's sentencing options if the court finds a probation violation, provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) 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 (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

[8] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained that “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[9] While a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation, *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008), Ind. Code § 35-38-2-3 “imposes no requirement upon the trial court to balance aggravating and mitigating circumstances and issue a sentencing statement when imposing a sanction for a probation violation.” *Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). This stems from the fact that a probation revocation hearing does not involve the imposition of a sentence but is a proceeding to consider the execution of a sentence already imposed. *See Mitchell v. State*, 619 N.E.2d 961, 963-964 (Ind. Ct. App. 1993), *overruled in part by Patterson v. State*, 659 N.E.2d 220, 223 n.2 (Ind. Ct. App. 1995) (holding that in a probation revocation proceeding, probationer’s mental health should be considered). As long as the proper procedures have been followed in conducting a probation revocation hearing, “the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

[10] To the extent Bolin claims due process requires the written sentencing statement to enumerate the court’s rationale and the evidence upon which it relied for revoking his probation and cites *Morrissey v. Brewer*, Indiana has codified the due process requirements at Ind. Code § 35-38-2-3. *Vernon v. State*, 903 N.E.2d 533, 537 (Ind. Ct. App. 2009) (citing *Woods*, 892 N.E.2d at 640; *Terrell v. State*, 886 N.E.2d 98, 100 (Ind. Ct. App. 2008), *trans. denied*).

The minimum requirements of due process include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) *a written statement by the factfinder as to the evidence relied on and reasons for revoking probation.*

*Terrell*, 886 N.E.2d at 100-101 (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593 (1972)). “When a probationer admits to the violation, the procedural due process safeguards and an evidentiary hearing are not necessary.” *Vernon*, 903 N.E.2d at 537 (citing *Woods*, 892 N.E.2d at 640; *Terrell*, 886 N.E.2d at 101). Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* (citing *Woods*, 892 N.E.2d at 640; *Terrell*, 886 N.E.2d at 101).

[11] Here, Bolin admitted to violating the terms of his probation. We cannot say reversal is warranted on this basis.

[12] As for the court’s order that Bolin serve a portion of his previously-suspended sentence, the record reveals that, at the revocation hearing, the court recited the allegations in the petition and described the possible penalties for a finding of a probation violation, Bolin indicated that he understood “to make an admission here today that [he] would be giving up [his] right to have a fact finding hearing in this matter” and admitted to violating his probation, and the court gave him an opportunity to present mitigating evidence and argument. Transcript

Volume II at 22. He argued to the court that he did not “knowingly and intentionally” fail to have identification and that he was not a danger to society or a flight risk. *Id.* at 23. The court ordered that Bolin serve 365 days of his previously-suspended sentence in the Vermillion County Jail and that afterward he be returned to probation. We cannot say the court abused its discretion.

[13] For the foregoing reasons, we affirm the trial court.

[14] Affirmed.

Bailey, J., and Weissmann, J., concur.