

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Aron Barricks,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 22, 2022

Court of Appeals Case No.
22A-CR-650

Appeal from the
Tippecanoe Superior Court

The Honorable
Steven P. Meyer, Judge

Trial Court Cause No.
79D02-1609-F4-38

Molter, Judge.

[1] Matthew Aron Barricks appeals from the trial court's order revoking his probation. He raises one issue for our review, which is whether the trial court

abused its discretion when it ordered him to serve the entirety of his previously suspended sentence. He argues that, when revoking his probation, the trial court relied on an erroneous impression that he had been granted a sentencing modification while serving the executed portion of his sentence. Because we find no error in the trial court's decision, we affirm.

Facts and Procedural History

[2] On September 2, 2016, the State charged Barricks with three counts of Level 4 felony sexual misconduct with a minor, one count of Level 4 felony child solicitation, and one count of Level 5 felony sexual misconduct with a minor. On April 10, 2017, pursuant to a plea agreement, Barricks pleaded guilty to Level 4 felony child solicitation, and in exchange, the State agreed to dismiss the remaining charges. On May 19, 2017, the trial court accepted the plea agreement and sentenced Barricks to six years with three years executed in the Indiana Department of Correction (“DOC”) and three years suspended to probation with the first year served through Tippecanoe Community Corrections. Barricks appealed, and on November 7, 2017, this court affirmed his sentence. *Barricks v. State*, No. 79A02-1706-CR-1307, 2017 WL 5148461 (Ind. Ct. App. Nov. 7, 2017), *trans. denied*.

[3] On October 16, 2018, Barricks filed a motion to modify his sentence, which the trial court denied on October 26, 2018. Although the entry in the Chronological Case Summary states that the order was titled “Order Granting Motion to Modify,” the clerk subsequently clarified that the entry should have been titled “Denying Motion to Modify.” Appellant’s App. Vol. II at 13. On

March 29, 2019, Barricks again moved to modify his sentence, and after holding a hearing on the motion, the trial court dismissed Barricks’s motion to modify his sentence.

[4] On October 21, 2019, the State filed a petition to revoke Barricks’s probation and alleged that he violated his probation in three ways, including by “using an application frequented by children, multiple phone applications, including but not limited to Whisper, Snapchat, and Instagram.” *Id.* at 56–57. On December 16, 2019, Barricks admitted to the allegations set forth in the State’s petition to revoke probation. The trial court revoked 213 days of his previously suspended sentence and ordered that time to be served in the DOC.

[5] On January 13, 2022, the State filed a second petition to revoke probation, alleging that Barricks violated his probation by: (1) violating Rule 7 of the Indiana Sex Offender Conditions, specifically, having an unreported device without monitoring software; (2) violating Rule 8 of the Indiana Sex Offender Conditions by accessing Instagram, Twitter, and Snapchat which are applications frequented by children; (3) failing to complete the Families United program; and (4) violating Rule 7 of the Indiana Sex Offender Conditions by accessing the MeetMe dating application. At the evidentiary hearing on the petition, Barricks admitted to all of the alleged probation violations, except for failing to complete the Families United program. Barricks admitted that he had used the MeetMe dating application as recently as December 2021. He also admitted that he had other probation violations, such as unpaid probation user fees.

[6] Barricks's probation officer testified at the evidentiary hearing and told the court that Barricks's previous violation was also for an "unreported phone," and that the present violation is almost "the exact same." Tr. Vol. 2 at 22. After the first violation, Barricks's probation officer explained to Barricks that if he wanted to use a smartphone, he was required to have monitoring software on the device. Barricks indicated that he understood and told the probation officer he would just use a flip phone instead of a smartphone. His probation officer told the court that he would not recommend placing Barricks back on probation because Barricks is "doing the exact same thing that he's been doing since the very beginning" and would instead recommend that Barricks's remaining suspended time be revoked. *Id.* at 23.

[7] The trial court revoked Barricks's probation and ordered that he serve the remainder of his previously suspended sentence in the DOC. In doing so, it briefly reviewed the history of Barricks's case and said that it remembered "the significant underlying charges which was solicitation, sex . . . with a minor. So, it started out by you either texting . . . or doing some kind of electronic communication with her. So, . . . that's what got you here. And that's pretty important." *Id.* at 30. The trial court also stated that Barricks's sentence was previously modified. *Id.* It explained that the decision to revoke Barricks's probation was "pretty black and white" because, "[w]e had a first violation. Then we had this second violation filed. Then since that time, you violated even further And while being advised of your violation, you continued to further violate." *Id.* Barricks now appeals.

Discussion and Decision

[8] Barricks argues on appeal that the trial court abused its discretion when it revoked the entirety of his previously suspended sentence. “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.* If a trial court determines that a person has violated a term or condition of probation within the probationary period, the 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 (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.

Ind. Code § 35-38-2-3(h).

[9] We review a trial court’s selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[10] The trial court did not abuse its discretion by revoking Barricks's probation because he admitted to violating his probation, and he has a history of violating his probation in the same way. This history and refusal to change behavior supports the trial court's decision, and any misunderstanding about a prior sentence modification did not alter that decision. Barricks admitted that he violated his probation by having an unreported device without monitoring software; accessing Instagram, Twitter, and Snapchat, which are applications frequented by children; and by accessing the MeetMe dating application. We have observed that one violation of a condition of probation is enough to support a probation revocation. *See Knecht v. State*, 85 N.E.3d 829, 839 (Ind. Ct. App. 2017).

[11] This is particularly true here because this was Barricks's second probation violation for the same behavior, and it was very similar to his underlying crime of child solicitation. When determining that Barricks's probation should be revoked, the trial court noted that his present probation violation involved the same behavior as his crime—using technology in impermissible ways. And his first probation violation was almost “the exact same” as his second probation violation, using an unreported phone to access websites frequented by children. Tr. Vol. 2 at 22. Barricks also admitted that he continued to use the MeetMe dating application as recently as December 2021, over four months after the State filed its initial petition alleging Barricks's second probation violation. The evidence demonstrated Barricks repeatedly refused to change his behavior, even when previously faced with the consequences of his actions. It is not an abuse

of discretion to revoke a defendant's probation after he repeatedly violates probation and does so in the same way. *See Prewitt*, 878 N.E.2d at 188 (holding that no abuse of discretion when the defendant "repeatedly violated his probation and repeatedly failed to complete the halfway house program").

[12] Although Barricks contends that the trial court abused its discretion when it revoked his probation because of a misunderstanding that his sentence had been previously modified, he does not provide authority for the proposition that such a minor procedural misunderstanding warrants reversal of a trial court's decision to revoke a defendant's probation. To be sure, when pronouncing its decision to revoke Barricks's probation, the trial court stated that it had previously granted Barricks a sentencing modification. But the decision to revoke Barricks's probation was based on his repeated violations of probation and refusal to change his behavior, not this minor misunderstanding of the procedural history of the case. This is clear from the trial court's statement that the decision to revoke Barricks's probation was "pretty black and white" because, "[w]e had a first violation. Then we had this second violation filed. Then since that time, you violated even further And while being advised of your violation, you continued to further violate." *Id.* Therefore, any misunderstanding the trial court had about a prior modification of Barricks's sentence did not rise to an abuse of discretion that would require a reversal of the trial court's decision. We, therefore, conclude that the trial court did not abuse its discretion when it revoked Barricks's probation and ordered that he serve the entirety of his previously suspended sentence.

[13] **Affirmed.**

Mathias, J., and Brown, J., concur.