

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lesley A. Caswell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 26, 2023

Court of Appeals Case No.
22A-CR-2334

Appeal from the Jefferson Circuit
Court

The Honorable Donald J. Mote,
Judge

Trial Court Cause No.
39C01-1411-FA-964

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Lesley A. Caswell appeals the trial court’s order that she serve 1,932 days of her previously-suspended sentence following the revocation of her probation. We affirm.

Facts and Procedural History

- [2] On November 10, 2014, the State charged Caswell with dealing in methamphetamine as a class A felony under cause number 39C01-1411-FA-964 (“Cause No. 964”). On June 3, 2015, Caswell and the State filed a plea agreement pursuant to which Caswell agreed to plead guilty to the lesser included count of dealing in methamphetamine as a class B felony under Cause No. 964 and possession of a device or substance used to interfere with a screening test as a class B misdemeanor under cause number 39C01-1504-CM-355 (“Cause No. 355”). The State agreed to dismiss “all remaining counts and all counts under 39C01-1410-CM-933.” Appellant’s Amended Appendix Volume II at 91 (capitalization omitted). In June 2015, the court sentenced Caswell to ten years for dealing in methamphetamine under Cause No. 964.
- [3] In August 2016, the court entered an order under Cause No. 964 granting Caswell’s motion for modification of her sentence. It found that Caswell completed the G.R.I.P. Therapeutic Community Drug Program at the Madison Correctional Facility, had no major conduct violations, and had complied with the provisions of the plea agreement. It sentenced Caswell to ten years with 2,622 days suspended and ordered that “the remainder of [her] sentence shall be suspended and [she be] placed on probation for 2,662 days.” *Id.* at 165.

[4] On October 17, 2017, Jefferson County Community Corrections filed a Verified Petition to Revoke Probation under Cause No. 964 alleging that Caswell violated the conditions of her placement by: using and testing positive for methamphetamine on or about March 1, 2017, and September 28, 2017; admitting to using methamphetamine on or about October 10, 2017; refusing to allow staff to enter her home on September 28, 2017; and failing to report for office appointments on September 22 and 27, 2017, and October 3 and 6, 2017. On July 23, 2018, the court entered an Order on Admission observing that Caswell admitted to violating the terms of her probation and revoking 730 days of her suspended sentence. It also ordered Caswell “returned to community corrections supervision as a condition of probation” Appellant’s Amended Appendix Volume III at 11.

[5] On June 23, 2021, Jefferson County Community Corrections filed a Verified Petition to Revoke Community Corrections under Cause No. 964 alleging that Caswell violated the conditions of placement by: failing to report for a fee hearing on June 17, 2021, and three appointments in May and June 2021; and being charged on March 6, 2021, with driving while suspended as a class A misdemeanor. On August 31, 2021, the court entered an Order on Probation Violation finding that Caswell admitted to violating probation by failing to report for appointments and being charged with the new offense of driving while suspended as a class A misdemeanor. The court ordered Caswell to report back to Jefferson County Community Corrections and that she continue to serve the remainder of the sentence on probation.

- [6] On April 6, 2022, Jefferson County Community Corrections filed a Verified Petition to Revoke Community Corrections/Probation alleging that Caswell violated the conditions of her placement by testing positive for methamphetamine, “Zanex,” and buprenorphine without a prescription on August 9, 2021, and methamphetamine, MDMA, and buprenorphine without a prescription on August 26, 2021; refusing a screen and signing an “admit form for Methamphetamine” on September 16, 2021; using methamphetamine on September 21, 2021; signing an “admit form for Methamphetamine and Benzodiazepine” on April 1, 2022; and failing to report on ten separate dates between September 2021 and March 2022. *Id.* at 32.
- [7] On September 2, 2022, the court held a fact-finding hearing. The State presented testimony of Lisa Kilvington, a case manager with Jefferson County Community Corrections, who stated that Caswell had five positive screens, had one refusal, and signed “an admit for that refusal.” Transcript Volume II at 18. She indicated that Caswell was offered and began the Matrix Program, a substance abuse program for methamphetamine use, but Caswell was terminated from the program due to absences. She stated that Caswell admitted to drug use as recently as April 1, 2022, while she had her children in the car. She indicated it was “very difficult to maintain communication” with Caswell. *Id.* at 23. She testified that, after she informed Caswell that she was going to file a petition to revoke, Caswell enrolled herself into a substance abuse program on April 13, 2022. She testified she did not believe Caswell was a good candidate for continued community supervision because Caswell “doesn’t feel that the

rules apply” and “shows up when she wants to, she calls when she wants to.” *Id.* at 27. She also stated: “I think that her attempt at treatment, although I am grateful that she did do it, was to get out of the warrant.” *Id.* On cross-examination, Kilvington testified regarding Caswell’s pregnancy and statements regarding bedrest and that she did not believe Caswell was on bedrest because there was “never any documentation brought in saying that she was on bedrest.” *Id.* at 43. She stated she asked Caswell for her medical records but did not receive them. She also indicated that Caswell completed a program at Centerstone on May 12th.

[8] Caswell testified that she used methamphetamine while she was placed on Community Corrections supervision, relapsed at the end of the previous summer, used every other day for a month and a half, and relapsed again at the end of March. She acknowledged that she “missed a lot of days” in the Matrix Program. *Id.* at 59. She stated that she “told her [she] was on bedrest” and “she said we can wait until after [she has] the baby, we’ll restart the program.” *Id.* She testified that she completed the GRIP program while incarcerated. She acknowledged admitting to the allegations in two prior petitions to revoke. On cross-examination, she stated she had three children, depression which led to her relapse, and a large support group at church.

[9] That same day, the court entered an Order Revoking Probation finding the State established by a preponderance of the evidence that Caswell violated the terms of her supervision by: failing to attend the Matrix Program and being terminated from the program; admitting to using methamphetamine on

September 16, 2021; admitting to using methamphetamine and benzodiazepines on April 1, 2022; failing to report on September 29, 2021, November 5, 8, and 23, 2021, and January 6, 2022; and failing to report for drug screens on March 21 and 31, 2022. The court observed that Caswell “now appears before the Court on yet a third Petition to Revoke which includes continued use of methamphetamine and continued failures to report for scheduled hearings and drug screens.” Appellant’s Amended Appendix Volume III at 64. The court stated:

While the Court applauds [Caswell] for her efforts at engaging in in-patient treatment, the Court cannot ignore her timing and admission that it was, in large part, an effort to avoid revocation of her suspended sentence. Further, it is troubling to the Court that her past violations included using methamphetamine and failing to report as directed, which behavior she continues to engage in despite facing significant adverse consequences. Given the opportunities she has been afforded in the past, and given she continues to violate despite having been previously revoked in 2017, the Court credits the testimony of the caseworker that there is little more that can be done here in the community for [Caswell].

Id. at 65. The court revoked 1,932 days of Caswell’s previously-suspended sentence.

Discussion

[10] Caswell asserts that the revocation of her suspended sentence was an abuse of discretion. She acknowledges admitting to using methamphetamine while on community corrections, relapsing and using every other day in July and August

2021, relapsing and using in March 2022, being terminated from the Matrix substance abuse program for attendance issues, and failing to appear for a drug screen on March 31, 2022. She contends that she completed an inpatient treatment program on May 12, 2022, turned herself into the court on May 17, 2022, and her relapses were precipitated by depression and postpartum issues. She also argues that she has three young children who are dependent upon her and she has a strong support network including friends and fellow churchgoers.

[11] Ind. Code § 35-38-2-3(h) 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.

[12] The Indiana Supreme Court has held that a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The Court 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.” *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* 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).

[13] The record reveals that the court modified Caswell’s sentence in 2016. The court entered orders in July 2018 and August 2021 finding that Caswell violated the terms of her probation. After the third petition to revoke probation, Caswell indicated that she relapsed multiple times. At the conclusion of the September 2, 2022 hearing, the court stated:

[R]ecognizing hardships that she has explained, that with respect to her family and her children, but the Court cannot ignore the fact that this is, at least by the Court’s count, a third opportunity that she has – she’s just not been able to pull it through. The Court doesn’t feel it has any options here given the fact that, I mean, I feel like putting you back on probation will be essentially a form of enabling, and the Court’s not in a position to do that.

Transcript Volume II at 80.

[14] In light of Caswell’s repeated violations of the terms of her probation, the nature of the violations, and the multiple opportunities Caswell had been given, we cannot say that the trial court abused its discretion in ordering her to serve 1,932 days of her previously-suspended sentence.

[15] For the foregoing reasons, we affirm the trial court's order.

[16] Affirmed.

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