

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

Zachary R. Miller,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 21, 2023

Court of Appeals Case No.  
23A-CR-1860

Appeal from the Decatur Superior  
Court

The Honorable Matthew D.  
Bailey, Judge

Trial Court Cause No.  
16D01-1809-F5-1253

**Memorandum Decision by Judge Mathias**  
Judges Riley and Crone concur.

**Mathias, Judge.**

[1] The Decatur Superior Court revoked Zachary R. Miller's probation and ordered him to serve 540 days of his previously suspended 730-day sentence. Miller appeals and argues that the trial court abused its discretion when it sentenced him.

[2] We affirm.

### **Facts and Procedural History**

[3] In September 2018, the State charged Miller with Level 5 felony escape and Level 6 felony escape after Miller fled from lawful detention and removed a GPS tracking device. The State also alleged that Miller was a habitual offender. In December, Miller agreed to plead guilty to Level 5 felony escape and to being a habitual offender. The parties agreed that Miller would serve seven years with 730 days of that sentence suspended to probation. Appellant's App. p. 30. On January 18, 2019, the trial court accepted Miller's plea agreement and sentenced him accordingly. *Id.* at 58-59.

[4] On January 9, 2022, Miller began serving probation. The terms of his probation included reporting to his probation officer, refraining from committing criminal acts, and completing a court-approved substance abuse program. *Id.* at 56. Miller tested positive for methamphetamine on June 10 and August 8. Thereafter, Miller was involuntarily discharged from the treatment program at Hickory Recovery Network because he failed to attend meetings and tested positive for methamphetamine.

- [5] Miller entered into a sanction agreement on August 30 and agreed to complete treatment at the Tara Treatment Center. But he failed to attend treatment at that facility and discharged himself voluntarily just hours after reporting for intake.
- [6] On September 21, the State filed a petition to revoke Miller’s probation alleging that he had tested positive for methamphetamine and had failed to complete an intensive outpatient program. *Id.* at 78. The trial court held a fact-finding hearing on the State’s petition to revoke on April 13, 2023. Miller admitted that he had violated his probation by testing positive for methamphetamine and failing to complete an intensive outpatient program. Miller requested a continuance for the sentencing hearing, which the court granted.
- [7] The trial court held Miller’s sentencing hearing on July 13. Miller’s probation officer testified that Miller did not have any contact with him while the probation revocation proceedings were pending. He did not consider Miller a good candidate for continued supervised probation. Tr. p. 17. Miller, his wife, and his mother testified to Miller’s recent efforts to maintain sobriety, his employment, and financial support for his family. *Id.* at 25-49. Miller asked the court to order him to complete treatment at a treatment facility. *Id.* at 37, 46. Miller also testified that he voluntarily began treatment at a sober living house in May 2023. *Id.* at 40. After considering Miller’s “past conduct and his violations[,]” the trial court found that Miller would not likely follow its orders. *Id.* at 59. Therefore, the court ordered Miller to serve 540 days of his previously suspended 730-day sentence.

[8] Miller now appeals.

## Discussion and Decision

[9] “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). Probation revocation is accomplished by a two-step process. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). First, the court makes a factual determination that a violation of a condition of probation actually occurred. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 479-80 (1972)). If the court finds a violation, then the court moves to the second step, determining the appropriate sanction for the violation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015). Miller admitted that he violated his probation and only challenges the sanction imposed.

[10] “[A] trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the trial court’s “decision is clearly against the logic and effect of the facts and circumstances” before the court. *Id.* Upon finding that a defendant has violated a condition of his probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h)(3). In determining the appropriate sanction upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances. *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*.

[11] Miller argues that the trial court abused its discretion when it ordered him to serve 540 days of his previously suspended 730-day sentence because his violation “was the direct result of his addiction issues and relapse into substance abuse.” Appellant’s Br. at 8. He also characterizes his violations as “technical” to support his argument that the trial court abused its discretion when it ordered him to serve 540 days executed.<sup>1</sup> Appellant’s Br. at 9-10.

[12] Miller, his wife, and his mother all presented testimony to the trial court that Miller finally has the motivation to stay sober, remain gainfully employed, and support his family and children. The trial court considered this testimony and weighed it against Miller’s past failure to complete treatment, his criminal history, and his violations of probation. The trial court found that Miller has not shown that he is able to follow the trial court’s orders, and it was within the trial court’s discretion to reach that conclusion after considering Miller’s inability to lead a law-abiding life and comply with the conditions of his probation.

[13] For all of these reasons, Miller has not persuaded us that the trial court’s order sentencing Miller to 540 days of his previously suspended 730-day sentence was

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<sup>1</sup> The trial court inexplicably found Miller “in violation of the conditions of probation *specifically for a technical violation.*” Appellant’s App. p. 108 (emphasis added). The court mischaracterized the violations. Two positive drug tests for methamphetamine and failure to complete intensive outpatient treatment are not “technical” violations of probation.

clearly against the logic and effect of the facts and circumstances before the court.

[14] **Affirmed.**

Riley, J., and Crone, J., concur.