

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Corey Lee Lane,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 2, 2022

Court of Appeals Case No.
22A-CR-221

Appeal from the Jefferson Superior
Court

The Honorable Blaine S. Goode,
Judge

Trial Court Cause No.
39D01-2009-F6-1041

Mathias, Judge.

- [1] Corey Lee Lane appeals the trial court's order that he serve the balance of his previously suspended sentence following the revocation of his probation. Lane

raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve the balance of his previously suspended sentence. We affirm.

Facts and Procedural History

- [2] On February 12, 2021, Lane pleaded guilty to Level 6 felony possession of methamphetamine and to the violation of probation in a prior cause number. Pursuant to Lane’s plea agreement with the State, the court sentenced him to two years suspended to supervised probation for the Level 6 felony conviction.
- [3] In April, the State filed its first petition to revoke Lane’s probation on the ground that he had committed Class C misdemeanor driving without a license and had tested positive for methamphetamine and marijuana. Lane admitted that he had violated the conditions of his probation, and the court returned him to probation.
- [4] In June, the State filed its second petition to revoke Lane’s probation on the ground that Lane had again tested positive for methamphetamine and marijuana.¹ Lane again admitted to violating the conditions of his probation. Thereafter, the court revoked Lane’s probation and ordered him to serve the balance of his previously suspended sentence in the Department of Correction. This appeal ensued.

¹ In both of its notices of probation violations, the State also alleged that Lane had missed appointments and failed to pay fees. We need not consider these additional alleged violations.

Standard of Review

- [5] Lane appeals the trial court’s order that he serve the balance of his previously suspended sentence. “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). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* We review an appeal from a trial court’s probation determination and sanction for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

Discussion and Decision

- [6] “A revocation hearing is in the nature of a civil proceeding, and the alleged violation only needs to be established by a preponderance of the evidence.” *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). The trial court must first make a factual determination that a violation of a condition has occurred. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019). If a violation of a condition is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.*

[7] Lane admitted that he violated the conditions of his probation. Thus, after the trial court determined that Lane’s violations warranted revoking his probation, the court was permitted to impose one or more of the following sanctions: (1) continue Lane on probation, with or without modifying or enlarging the conditions; (2) extend Lane’s probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. *See id.* (citing [Ind. Code § 35-38-2-3\(h\)](#)).

[8] Lane asserts that the trial court abused its discretion when it ordered him to execute the balance of his originally suspended sentence. Instead, Lane continues, his continued use of illicit substances reveals his addictions, and his “mental state and . . . efforts to obtain treatment should have been considered” by the trial court in its sanction for his violations. Appellant’s Br. at 10. He further asserts that he had reached out to a residential treatment center but could not get in due to the COVID pandemic.

[9] Be that as it may, Lane’s underlying offense was for possession of methamphetamine. Twice within a few months after being placed on probation, Lane violated the conditions of his placement by continuing to test positive for methamphetamine. Following the first violation, the trial court returned Lane to probation. And, in his underlying plea agreement, Lane admitted to violating the conditions of probation in another cause number.

[10] The facts and circumstances before the trial court on the State's second notice of violation supported the court's conclusion that Lane's continued placement on probation was not going to be successful. Thus, we cannot say that the trial court abused its discretion when it ordered Lane to serve the balance of his previously suspended sentence, and we affirm the trial court's judgment.

[11] Affirmed.

Brown, J., and Molter, J., concur.