

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Caleb Kaje Drake,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 31, 2022

Court of Appeals Case No.
21A-CR-2548

Appeal from the Hamilton
Superior Court

The Honorable William J. Hughes,
Judge

Trial Court Cause No.
29D03-1707-F3-5158

Crone, Judge.

Case Summary

- [1] Caleb Drake appeals the sanction imposed by the trial court following the revocation of his probation. The sole issue presented for our review is whether the trial court abused its discretion. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] Drake pled guilty to level 5 felony child solicitation on March 28, 2018, and was sentenced to six years, with four years executed in the Indiana Department of Correction (DOC) and two years suspended to probation. Drake's probationary period began on July 9, 2020. On September 30, 2020, the State filed its first notice of probation violation alleging that Drake had violated his probation by failing to attend four sex-offender therapy sessions as required by the terms and conditions of his probation. On November 4, 2020, the State filed a second notice of probation violation alleging that Drake had committed new offenses and lied to his probation officer about his use of the internet. Drake entered into an agreed resolution on February 12, 2021, in which he admitted to the first violation in exchange for dismissal of the second violation. As part of the resolution, Drake was ordered to serve forty days in the DOC, with credit for two days, and then he was returned to probation under the original terms.
- [3] On April 8, 2021, the State filed a third notice of probation violation alleging that Drake had violated his probation by committing three new offenses of level 6 felony failure to register as a sex offender. Specifically, Drake failed to use the correct address when he registered as a sex offender. On June 15, 2021, the

State filed a fourth notice of probation violation alleging that Drake violated his probation for committing the new offenses of level 6 felony possession of a narcotic drug and class A misdemeanor operating a vehicle while intoxicated.

[4] On June 24 and 28, 2021, Drake completed two drug screens. The June 28 screen was positive for amphetamine and methamphetamine. Drake later admitted to his probation officer that he had consumed a line of methamphetamine with a friend prior to the June 28 drug screen. Thereafter, the State filed a fifth notice of probation violation alleging that Drake violated his probation by admitting to using and testing positive for illegal drugs.

[5] On August 27, Drake completed a drug screen, but before he left the probation office, he admitted to his probation officer that he had used heroin the night before. That screen subsequently came back positive for fentanyl and norfentanyl. On September 8, 2021, the State filed a sixth notice of probation violation alleging that Drake violated his probation by admitting to using an illegal drug and testing positive for fentanyl and norfentanyl without a valid prescription, which indicated the use of an illegal drug.

[6] A factfinding hearing was held on October 21, 2021. Following the hearing, the trial court found that Drake had violated his probation by committing the new offense of failing to register as a sex offender, by testing positive for and admitting to using amphetamine and methamphetamine, and admitting to using heroin. The trial court found that the State had failed to prove the other

alleged probation violations. Prior to pronouncing Drake's sanction, the court explained,

I've done just about as much as can be done for Mr. Drake and he has frittered away a whole year of time trying to address these issues and committed more and more offenses every time and there's nothing more that I can do in this community and not place the [] members of this community at an unreasonable risk.

Tr. Vol. 2 at 29-30. The trial court then revoked Drake's previously suspended sentence and ordered him to serve the remainder of his sentence in the DOC.

This appeal ensued.

Discussion and Decision

- [7] Drake appeals the sanction imposed by the trial court following the revocation of his probation. Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). 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). We review the trial court's sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs “only where the trial court's decision is clearly against the logic and effect of the facts and circumstances” before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). 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).

[8] Drake's sole assertion on appeal is that the trial court's decision to revoke the entirety of his previously suspended sentence was too harsh in light of his mitigating evidence that he cooperated with his probation officer by admitting to his continuing drug use. However, in determining the appropriate sentence 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*. So long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the court may properly order execution of a suspended sentence upon a finding of a single violation by a preponderance of the evidence. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. Given Drake's multiple probation violations and his admitted continuing illegal drug use, the trial court was well within its discretion to determine that Drake was not a good candidate to continue on probation or to be placed in community corrections where he would have "the opportunity to access drugs." Tr. Vol. 2 at 29. We therefore conclude that the trial court did not abuse its discretion when it ordered Drake to serve the entirety of his previously suspended sentence in the DOC.

[9] Affirmed.

Bradford, C.J., and Tavitas, J., concur.