

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kyle Voegelé,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 22, 2021

Court of Appeals Case No.
20A-CR-1801

Appeal from the Ripley Superior
Court

The Honorable Jeffrey L. Sharp,
Judge

Trial Court Cause No.
69D01-1808-F6-192

Weissmann, Judge.

- [1] Kyle Voegele violated his probation, and the trial court imposed his full suspended sentence as a result. Finding no abuse of discretion, we affirm.

Facts

- [2] Voegele pleaded guilty to theft, a Level 6 felony, in November 2019. The trial court sentenced Voegele to 730 days in the Department of Correction, suspended 720 days of that sentence, and placed Voegele on supervised probation. The conditions of Voegele’s probation prohibited him from using drugs not prescribed by a physician.
- [3] Voegele tested positive for methamphetamine in August 2020, after almost nine months of negative drug screens. After a fact-finding hearing related to the incident, during which Voegele admitted the drug use, the trial court found that Voegele violated the conditions of his probation. Because Voegele failed to take advantage of addiction recovery services ordered in past criminal cases, the court decided to “revok[e] it all” and ordered Voegele to serve the entirety of Voegele’s previously suspended sentence—720 days imprisonment. Tr. Vol. II p. 17. Voegele appeals, arguing that the trial court abused its discretion when it ordered Voegele to execute the full two-year sentence as a sanction for his probation violation.

Discussion and Decision

- [4] Probation is a matter of grace left to trial court discretion rather than a right to which a defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

Revocation is a two-step process: (1) the trial court must make a factual determination that a violation occurred; and (2) if a violation is proven, the trial court must determine if that violation warrants revocation. *Woods v. State*, 892 N.E.2d 637, (Ind. 2008). The trial court has “considerable leeway in deciding how to proceed,” and we will reverse only if the decision is clearly against the logic and effect of the facts and circumstances. *Prewitt*, 878 N.E.2d at 188.

- [5] Because Voegle admitted to violating probation, we only consider whether the trial court abused its discretion in revoking probation and imposing his full suspended sentence. Voegle argues that his violation was not particularly egregious and, therefore, does not warrant a revision to his sentence. He compares his one-time drug use to technical violations this Court previously determined did not support sanctions: *Johnson v. State*, 62 N.E.3d 1224, 1230 (Ind. Ct. App. 2016) (reversing community corrections revocation for defendant who was “out of place” but close to where he was supposed to be and had “well-documented mental limitations or illness”); *Sullivan v. State*, 56 N.E.3d 1157 1162 (Ind. Ct. App. 2016) (reversing community corrections revocation for defendant who was hospitalized at the time he was meant to report for home detention); *Ripps v. State*, 968 N.E.2d 323, 325-26 (Ind. Ct. App. 2012) (reversing probation revocation for defendant who was severely ill, who was attempting to adhere to the terms of his probation, and whose violations were technical). Based on these cases, Voegle argues that he deserves leniency as an addict who relapsed because of stress due to an unrelated Indiana Department of Child Services case.

[6] Unfortunately, drug use is not a technical probation violation. *See, e.g., Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. 2019) (stating “three positive drug screens are hardly ‘mere’ technical violations of probation.”). Though we commend Voegele’s significant progress in staying clean for many months, holding down a steady job, and admitting his violation, his argument amounts to a request to reweigh evidence or reevaluate witness credibility, which we will not do. *Johanson*, 62 N.E.3d 1229.

[7] Importantly, the trial court found Voegele was “disingenuous” when he claimed he never had adequate opportunity to participate in substance abuse counseling. Tr. Vol. II p. 16. The court further observed, “You’ve been offered help. . . . You haven’t taken it seriously.” *Id.* at 17. Given Voegele’s history of drug use and lack of participation in rehabilitation services, we cannot say the trial court abused its discretion in imposing Voegele’s full suspended sentence for a single instance of illicit drug use. We therefore affirm the judgment of the trial court.

Mathias, J., and Altice, J., concur.