

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Jeremy D. Hemingway,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 23, 2023

Court of Appeals Case No.  
22A-CR-2423

Appeal from the Jefferson Superior  
Court

The Honorable Blaine S. Goode,  
Judge

Trial Court Cause No.  
39D01-1810-F5-1131

### Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

**Pyle, Judge.**

## Statement of the Case

- [1] Jeremy Hemingway (“Hemingway”) appeals the trial court’s revocation of his probation. Hemingway argues that the trial court abused its discretion when it determined that Hemingway had violated the terms of his probation and revoked the entirety of Hemingway’s suspended sentence. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s order.
- [2] We affirm.

## Issue

Whether the trial court abused its discretion when it determined that Hemingway had violated the terms of his probation and revoked the entirety of Hemingway’s suspended sentence.

## Facts

- [3] In October 2018, the State charged Hemingway with Level 5 felony domestic battery and Level 6 felony strangulation. Hemingway entered into a plea agreement with the State. Hemingway agreed to plead guilty to the Level 5 felony domestic battery. In exchange, the State agreed to dismiss the Level 6 felony strangulation charge.
- [4] In January 2020, the trial court sentenced Hemingway to one thousand and ninety-five (1,095) days, with one hundred and eighty-two (182) days executed and the remainder suspended to probation with Jefferson County Community Corrections (“JCCC”). As terms of his probation, Hemingway agreed to multiple conditions. Specifically, Hemingway agreed, among other things, to:

(1) not “use or possess alcoholic beverages, illegal drugs, synthetic drugs, or controlled substances[;]” (2) “submit to any drug screen tests requested by Community Corrections[;]” and (3) “participate in and pay for all counseling or programming recommended for [Hemingway] by [his] supervision officer[.]” (App. Vol. 2 at 44).

[5] In January 2021, JCCC filed a petition to revoke Hemingway’s probation. In its petition, JCCC alleged that, among other things, Hemingway had: (1) failed six drug tests between September 2020 and October 2020; (2) failed to call or report to JCCC nine times between November 2020 and December 2020; (3) failed to appear for appointments ten times between April 2020 and November 2020; (4) failed to keep his electronic monitoring device powered on two occasions between March 2020 and April 2020; and (5) failed to complete individual and group counseling. In January 2022, the trial court found that Hemingway had violated the terms of his probation and revoked twenty (20) days of Hemingway’s previously suspended sentence to be served in the Jefferson County Jail. After serving his twenty (20) day sentence, the trial court ordered Hemingway to be placed back on probation under the same terms.

[6] In April 2022, just three months after the first revocation of Hemingway’s probation, JCCC filed a second petition to revoke. In its petition, JCCC alleged that Hemingway had violated the terms of his probation by: (1) failing two drug screenings between February 2022 and April 2022; (2) failing to appear at appointments with the JCCC three times between March 2022 and April 2022; (3) failing to report for drug screenings three times between February 2022 and

April 2022; (4) failing to complete a substance abuse/mental health assessment; and (5) failing to pay fees in the amount of \$1,342.

- [7] In September 2022, the trial court held a probation revocation hearing. At this hearing, Case Manager Ani Bridges (“CM Bridges”) testified that she had been Hemingway’s case manager since January 2020. Additionally, CM Bridges testified that Hemingway had been non-compliant by:

Testing positive on April 1, 2022 for Fentanyl and on February 14, 2022 for alcohol, failing to report for Community Corrections appointments on March 25, 2022, April 1, 2022, and April 14, 2022. In addition to failing to report for drug screens on February 14, 2022, March 22, 2022, and March 31, 2022. Failing to complete a substance abuse, mental health assessment and specifically with complying with those treatment recommendations.

(Tr. Vol. 2 at 5). CM Bridges also testified that Hemingway had admitted to using Fentanyl. Finally, CM Bridges recommended that Hemingway serve his remaining suspended sentence with the Indiana Department of Correction (“the DOC”).

- [8] Hemingway also testified at the hearing. Hemingway admitted that he had used Fentanyl given to him by a neighbor’s step-son. He testified that he “kn[e]w [that] he shouldn’t have t[aken] [Fentanyl] but [he] did[.]” (Tr. Vol. 2 at 14). Hemingway also testified that he had never been notified about any appointments or drug screens. He also claimed that he had attempted to set up

a substance abuse/mental health assessment but had not completed it at the time of the revocation notice.

[9] At the conclusion of the hearing, the trial court stated: “I think it’s significant that the former petition to revoke was for essentially the same things; using drugs; failing to report for drug screens; failing to report for office or phone appointments. It appears that . . . Hemingway didn’t learn his lesson.” (Tr. Vol. 2 at 19). The trial court revoked Hemingway’s probation and ordered him to serve the remainder of his suspended sentence at the DOC.

[10] Hemingway now appeals.

## **Decision**

[11] Hemingway argues that the trial court abused its discretion when it determined that Hemingway had violated the terms of his probation and revoked the entirety of Hemingway’s suspended sentence. “[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) (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Prewitt*, 878 N.E.2d at 188. “If this discretion were not given to trial courts and sentences were scrutinized

too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.*

- [12] Hemingway first argues that the trial court abused its discretion when it determined that he had violated the terms of his probation. We disagree.
- [13] Probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). First, the court must make a factual determination that a violation of a condition of probation actually occurred. *Id.* If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* It is well settled that a single “violation of a condition of probation is enough to support a probation revocation.” *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).
- [14] Our review of the record reveals that Hemingway admitted to using Fentanyl. Further, CM Bridges testified that Hemingway had failed multiple drug screens, missed multiple appointments, missed multiple drug screens, and had failed to complete a substance abuse/mental health assessment, all of which was in violation of the terms of probation that Hemingway had agreed to. The record clearly shows that Hemingway had violated the terms of his probation.
- [15] Hemingway next argues that the trial court abused its discretion when it revoked the entirety of his suspended sentence. We disagree.
- [16] INDIANA CODE § 35-38-2-3(h)(3) provides:

(h) If the court finds that the person has violated a condition [of probation] 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:

\* \* \* \* \*

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

[17] Our review of the record reveals that the trial court, at the conclusion of the revocation hearing, ordered Hemingway to serve the remainder of his suspended sentence at the DOC. Considering the record before us, the sanction imposed was well within the trial court's discretion. See I.C. § 35-38-2-3(h)(3). Accordingly, we affirm the trial court's order.

[18] Affirmed.

Altice, C.J., and Riley, J., concur.