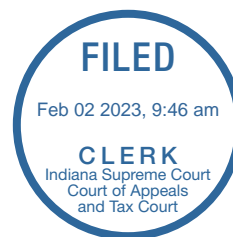


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Brandon Beeman,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

February 2, 2023

Court of Appeals Case No.
22A-CR-1999

Appeal from the Ripley Circuit
Court

The Hon. Jeffrey Sharp, Special
Judge

Trial Court Cause No.
69C01-1308-FC-11

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] In 2013, Brandon Beeman pled guilty to operating a vehicle as a habitual traffic violator for life, and the trial court sentenced him to eight years of incarceration, with two years served on home detention and four years suspended to probation. From 2020 to 2022, Beeman violated the terms of his probation by committing seven new crimes, testing positive for illegal drugs on numerous occasions, and twice failing to report to probation. Following Beeman’s admission to violating the terms of his probation, the trial court ordered that he serve three years of his previously-suspended sentence. Beeman contends that the trial court abused its discretion in ordering that he serve a portion of his previously-suspended sentence in the Department of Correction (“the DOC”). Because we disagree, we affirm.

Facts and Procedural History

- [2] In 2013, the State charged Beeman with operating a vehicle as a habitual traffic violator for life as a Class C felony and possession of a hypodermic needle as a Class D felony. Beeman pled guilty to operating a vehicle as a habitual traffic violator for life, and the State dismissed the possession charge. The trial court sentenced Beeman to eight years of incarceration, with two years served on home detention and four years suspended to probation.
- [3] On January 8, 2020, the State alleged that Beeman had violated the terms of his probation by using methamphetamine and committing new criminal offenses in Jennings County, namely, Level 5 felony operating a motor vehicle after

forfeiture for life, Level 6 felony possession of methamphetamine, Level 6 felony maintaining a common nuisance, and Class C misdemeanor possession of paraphernalia. On November 2, 2020, the State filed an amended petition for probation violation alleging that Beeman had violated the terms of his probation by testing positive for methamphetamine, amphetamine, and tramadol. On March 10, 2021, the State filed a third amended petition for probation violation alleging that Beeman had violated the terms of his probation by failing to report to probation on two occasions. On July 20, 2021, the State filed a fourth amended petition for probation violation alleging that Beeman had again tested positive for methamphetamine and amphetamine. On July 18, 2022, the State filed a fifth amended petition for probation violation alleging that Beeman had violated the terms of his probation by committing new criminal offenses in Jennings County, namely, Level 6 felony possession of a narcotic drug, Level 6 felony possession of methamphetamine, and Class A misdemeanor resisting law enforcement.

[4] On July 20, 2022, Beeman admitted to violating the terms of his probation by committing operating a motor vehicle after forfeiture for life, possession of methamphetamine, maintaining a common nuisance, and possession of paraphernalia on January 2, 2020; committing possession of a narcotic drug, possession of methamphetamine, and resisting law enforcement on July 17, 2022; using methamphetamine on January 2, 2020; testing positive for methamphetamine, amphetamine, and tramadol on October 19, 2020; testing positive for methamphetamine and amphetamine on July 15, 2021; and twice

failing to report to probation. The trial court noted that Beeman had been given repeated opportunities to succeed and that his consistent methamphetamine use had made him a “terrible” candidate for probation. Tr. Vol. II p. 23. The trial court ordered Beeman to serve three years of his previously-suspended sentence in the DOC.

Discussion and Decision

[5] Beeman argues that the trial court abused its discretion in revoking his probation and ordering him to serve three years 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) (citing *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*). The Indiana Supreme Court has held that “a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard[,]” explaining that

[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.

Prewitt, 878 N.E.2d at 187. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[6] Probation revocation is a two-step process. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). First, there must be a factual determination that a

violation of a probation condition occurred by a preponderance of the evidence. *See id.* Here, Beeman has admitted to numerous violations of the terms of his probation. Second, the trial court must determine whether the violation warrants revocation. *See id.* A trial court may revoke the defendant’s probation upon proof of a single violation. *See, e.g., Killebrew v State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021) (citations omitted), *trans. denied*. Where a violation of the terms of probation has been established, Indiana Code subsection 35-38-2-3(h)(3) allows the trial court to “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing[,]” and the “[c]onsideration and imposition of any alternatives to incarceration is a ‘matter of grace’ left to the discretion of the trial court.” *Monday v. State*, 671 N.E.2d 467, 469 (Ind. Ct. App. 1996) (citation omitted).

[7] We have little hesitation in concluding that the trial court acted within its discretion in ordering Beeman to execute three years of his previously-suspended sentence. Beeman has admitted to violating the terms of his probation by committing seven new criminal offenses (five of which were drug-related), testing positive for illegal drugs on numerous occasions, and failing to report to probation. Most of these violations occurred when Beeman was out on bond, and any one of them would be sufficient to sustain a revocation of his probation. Beeman essentially argues that he deserves one more chance to address his addiction issues. We have observed in a sentencing context, however, that “when a defendant is aware of a substance abuse problem but has not taken appropriate steps to treat it, the trial court does not abuse its

discretion by rejecting the addiction as a mitigating circumstance.” *Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (citations omitted), *trans. denied*. Despite being given numerous opportunities to address his illegal drug use, Beeman has chosen not to do so, having attended at least four separate rehabilitation programs in two counties, without apparent effect. Given this history, the trial court was well within its discretion in concluding that Beeman would not benefit from yet another chance and ordering that he serve three years of his previously-suspended sentence.

[8] We affirm the judgment of the trial court.

May, J., and Mathias, J., concur.