

## 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.



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### ATTORNEY FOR APPELLANT

Anne Medlin Lowe  
Fugate Gangstad LLC  
Carmel, Indiana

### ATTORNEYS FOR APPELLEE

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

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## IN THE COURT OF APPEALS OF INDIANA

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Andrea R. Cottrell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

November 7, 2022

Court of Appeals Case No.  
22A-CR-1280

Appeal from the Vermillion Circuit  
Court

The Honorable Robert M. Hall,  
Judge

Trial Court Cause No.  
83C01-1710-F6-189

**Crone, Judge.**

## Case Summary

- [1] Andrea R. Cottrell appeals the revocation of her probation. She contends that the State presented insufficient evidence to support the trial court's finding that she violated her probation. She further asserts that the trial court abused its discretion in ordering her to execute the remainder of her sentence in the Department of Correction. Finding sufficient evidence and no abuse of discretion, we affirm.

## Facts and Procedural History

- [2] In October 2017, the State charged Cottrell with level 6 felony dealing in a controlled substance and level 6 felony maintaining a common nuisance. Cottrell pled guilty pursuant to a plea agreement on January 17, 2018. The trial court sentenced her to one year on home detention supervised by Vigo County Community Corrections followed by eighteen months of informal probation.
- [3] On June 11, 2018, Terre Haute police responded to a domestic dispute between Cottrell and Samuel Gustin. According to Gustin, Cottrell scratched him and struck him twice with a hammer. Gustin suffered multiple injuries, and Cottrell admitted to inflicting some of those injuries. Both parties were arrested, and the State subsequently charged Cottrell with level 5 domestic battery by means of a deadly weapon. Thereafter, the State filed its first petition to revoke Cottrell's probation alleging that she had violated the terms of her probation by committing a new criminal offense.

[4] As part of Cottrell's probation, she was required to submit to drug screens. She submitted a baseline screen on August 23, 2018, that revealed she had used methamphetamine, amphetamine, methadone, and THC. She submitted a second screen on August 30 in which she again tested positive for methamphetamine, amphetamine, methadone, and THC. She was screened again on September 9, and she tested positive for methamphetamine, amphetamine, benzodiazepine, methadone, THC, and alprazolam. Methadone is the only substance that Cottrell had been prescribed. After the third screen, Vigo County Community Corrections determined that it would no longer supervise Cottrell, and she was transferred back to Vermillion County. On December 30, 2019, the State filed a notice of community corrections violation alleging that Cottrell had been rejected by the program after serving only nineteen days due to repeated positive drug screens.

[5] In January 2021, Cottrell was incarcerated in the Vermillion County Jail. On January 22, the trial court issued an order for Cottrell to be released from the jail on January 25 with orders for her to report directly to Dove Recovery House (Dove House), an addiction treatment center in Indianapolis. She was also instructed to contact her probation officer for intense supervision upon her admission into Dove House. That same day, Cottrell was mistakenly released from the jail. Upon realizing that a mistake had been made, a jail employee called Cottrell on her cell phone and told her to return to the jail. Cottrell claimed that she was already in Indianapolis and planning to report to Dove House. Cottrell was instructed that she still needed to return to the jail, or a

warrant would be issued for her arrest. Cottrell did not return to the jail. As of Tuesday, January 26, Cottrell still had not reported to Dove House or contacted her probation officer. Her probation officer repeatedly tried to contact her to no avail. Accordingly, a second petition to revoke Cottrell's probation was filed that same day. The petition alleged that Cottrell violated her probation by neither returning to jail as instructed nor reporting to Dove House or reporting to her probation officer as required.

[6] Then, in June 2021, Cottrell was charged in Putnam County with possession of methamphetamine, unlawful possession of a syringe, and false reporting. A third petition to revoke Cottrell's probation was filed. The petition alleged that Cottrell violated her probation by committing those new criminal offenses.

[7] The trial court held a hearing on the second petition to revoke probation on March 15, 2022. At the conclusion of the hearing, the trial court found by a preponderance of the evidence that Cottrell violated her probation and returned her to informal probation. The trial court noted that the other probation violation petitions remained pending.<sup>1</sup> The trial court held a hearing on the first and third petitions to revoke probation on April 29, 2022. At the conclusion of that hearing, the trial court found by a preponderance of the evidence that Cottrell had violated her probation, revoked her probation, and ordered her to

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<sup>1</sup> That same day, the State filed a fourth petition to revoke probation alleging that, in January 2021, Cottrell was charged with the new crime of failure to return to lawful detention.

serve the remainder of her sentence in the Department of Correction. This appeal ensued.

## Discussion and Decision

### **Section 1 – Sufficient evidence supports the revocation of Cottrell’s probation and the revocation of her community corrections placement.**

- [8] Cottrell first asserts that the State presented insufficient evidence to support the revocation of her probation. “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). We review probation violation determinations for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law. *Id.*
- [9] Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation occurred. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Second, the court must determine if the violation warrants revocation of probation. *Id.* “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).

In reviewing the sufficiency of the evidence, we use the same standard as in any other sufficiency question. When the appellant

challenges the sufficiency of the factual basis for revocation, we neither reweigh the evidence nor judge the credibility of the witnesses. If substantial evidence of probative value supports the trial court's decision that the appellant has committed a violation of a condition of [her] probation, then revocation of probation was proper.

*Id.* (citations omitted). In short, “[i]f there is substantial evidence of probative value to support the trial court’s decision that a defendant has violated any terms of probation, the reviewing court will affirm its decision to revoke probation.” *Woods*, 892 N.E.2d at 639-40. Violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

[10] The State presented evidence that Cottrell committed numerous probation violations over the course of her probationary period. This included the commission of multiple new criminal offenses. Cottrell is correct that an arrest or the mere filing of a criminal charge against a defendant will not alone warrant the revocation of probation because the State must prove that the defendant committed the charged offense by a preponderance of the evidence. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). However, contrary to her assertions, the State unequivocally met that burden of proof here. The State presented testimony from the arresting officer in Cottrell’s domestic violence case as well as the arresting officer in her possession of methamphetamine, unlawful possession of a syringe, and false reporting case. Each witness provided testimony sufficient to establish, by a preponderance of the evidence,

that Cottrell committed those new criminal offenses while on probation. Cottrell's argument that the trial court was required to make an express statement on the record "that the State's evidence met the preponderance standard" is unsupported by legal authority and inaccurate. Appellant's Br. at 12. Sufficient evidence supports the revocation of Cottrell's probation.

[11] Cottrell makes a similar sufficiency argument regarding the trial court's revocation of her community corrections placement. We have observed that

[b]oth probation and community corrections programs serve as alternatives to commitment to the DOC, and both are made at the sole discretion of the trial court. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right.

The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. That is, a revocation of community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence.

*Treece v. State*, 10 N.E.3d 52, 56 (Ind. Ct. App. 2014) (quoting *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007)), *trans. denied*.

[12] Cottrell concedes that the State presented evidence that, while in community corrections, she repeatedly tested positive for illegal substances. Regarding two of those substances, she claims that the "THC and methamphetamine levels decreased significantly over the course of the screenings[,] " which supports an inference that "she was progressing in overcoming her addiction." Appellant's

Br. at 16. Be that as it may, Cottrell's use of illegal substances violated the terms and conditions of her placement. The State presented sufficient evidence to support the revocation of Cottrell's community corrections placement.

**Section 2 – The trial court did not abuse its discretion in ordering Cottrell to execute the remainder of her sentence in the Department of Correction.**

[13] Cottrell next claims that the trial court abused its discretion in ordering her to execute the remainder of her previously suspended sentence in the Department of Correction. Upon finding that a defendant has violated a condition of her 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). This Court reviews a trial court's sentencing decision following a probation revocation for an abuse of discretion. *Butler v. State*, 951 N.E.2d 255, 262 (Ind. Ct. App. 2011). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

[14] Cottrell's sole assertion is that the trial court's decision to revoke the entirety of her previously suspended sentence was too harsh given her long history of addiction, her poor health, and her acknowledgment of responsibility for the destructive choices she has made in her life. However, in determining the appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances. *Treece*, 10 N.E.3d at 59. 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*. In light of Cottrell’s multiple violations of the terms and conditions of her probation, the trial court was well within its discretion to determine that Cottrell was not a suitable candidate to continue on probation. We therefore conclude that the trial court did not abuse its discretion when it ordered Cottrell to serve the entirety of her previously suspended sentence in the Department of Correction.

[15] Affirmed.

May, J., and Weissmann, J., concur.