

## 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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## IN THE COURT OF APPEALS OF INDIANA

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Brendon White,  
*Appellant-Defendant,*

v.

State of Indiana  
*Appellee-Plaintiff.*

March 10, 2022

Court of Appeals Case No.  
21A-CR-1741

Appeal from the Dearborn Circuit  
Court

The Honorable James D.  
Humphrey, Judge

Trial Court Cause No.  
15C01-1303-FB-13

**Bradford, Chief Judge.**

## Case Summary

[1] In March of 2015, Brendon White pled guilty to Class B felony burglary and was sentenced to ten years of incarceration, with eight years suspended to probation. Following two separate probation violations for drug use and suspended-sentence revocations, White was left with a five-year suspended sentence. In November of 2019 and 2020, White again tested positive for drugs. The State then filed its third notice of probation violation, and the trial court issued a warrant for White's arrest. In April of 2021, police attempted to stop a vehicle driven by White that they observed swerving and straddling lanes. Rather than stopping, White led the police on a high-speed chase across three counties before finally surrendering. White was charged with Level 6 felony resisting law enforcement with a vehicle, Class C misdemeanor reckless driving, and Class C misdemeanor operating with a suspended driver's license. On June 28, 2021, the trial court revoked White's probation, finding that he had violated its terms and ordered him to serve his previously-suspended five-year sentence. White contends that the trial court abused its discretion in revoking his probation and ordering him to serve his previously-suspended sentence. Because we disagree, we affirm.

## Facts and Procedural History

- [2] On February 12, 2015, White pled guilty to Class B felony burglary and the trial court accepted the plea agreement and sentenced White to ten years of incarceration, with eight years suspended to probation. In accepting the conditions of his probation, White agreed to refrain from committing additional criminal offenses and from using illegal drugs and/or controlled substances.
- [3] On May 19, 2015, the State filed its first notice of probation violation after White tested positive for amphetamines and methamphetamine. The trial court found a violation and revoked one year of White's suspended sentence. On April 21, 2016, the State filed its second notice of probation violation after White tested positive for buprenorphine, norbuprenorphine, and cannabinoids. The trial court found a violation and sentenced White to two years of incarceration, leaving a remaining suspended-sentence of five years.
- [4] On November 20, 2019, while serving his suspended-sentence on probation, White tested positive for cannabinoids. On January 31, 2020, White tested positive for amphetamine, methamphetamine, buprenorphine, and norbuprenorphine. On February 10, 2020, the State filed its third notice of probation violation against White, and the trial court issued a warrant for his arrest.
- [5] White remained at large for fourteen months until April 27, 2021, when Officer Jacob Lusby attempted a traffic stop of White's vehicle after observing it straddling lanes and swerving. Rather than pulling over, White attempted to flee from law enforcement in his vehicle. In his attempt to evade law

enforcement, White drove through three counties, wove in and out of traffic, reached speeds of ninety-four miles per hour, and fled on foot before finally surrendering. Following his arrest, White admitted that he had fled because of the warrant for his arrest and because his license was suspended. White was charged with Level 6 felony resisting law enforcement with a vehicle, Class C misdemeanor reckless driving, and Class C misdemeanor operating with a suspended driver's license.

[6] The following day, the State amended its third notice of probation violation in light of White's new criminal charges. On June 28, 2021, following an evidentiary hearing, the trial court found that White had violated the terms of his probation, revoked his probation, and ordered him to serve the entirety of his previously-suspended five-year sentence.

## Discussion and Decision

[7] White argues that the trial court abused its discretion in ordering him to serve the balance 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.*

[8] 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). 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). “When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses.” *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans denied*.

[9] We conclude that the trial court did not abuse its discretion in ordering White to serve his previously-suspended sentence. Of the three probation violations that the State issued, any single violation of the terms of White’s probation would be sufficient to support the trial court’s order that he serve the balance of his previously-suspended sentence. *See Gosha*, 873 N.E.2d at 663. White

argues that his attempts at rehabilitation, including his participation with substance-abuse groups and therapists, warrant reconsideration of the trial court's revocation of his probation. However, we note that White has twice before been ordered to serve portions of his previously-suspended sentence with little discernible effect on his behavior. White had ample opportunity to correct his behavior before the trial court revoked the remainder of his suspended sentence but did not. In the end, White's argument concerning his suitability for rehabilitation is nothing more than an invitation to reweigh the evidence, which we will not do. *See Vernon*, 903 N.E.2d at 536.

[10] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.