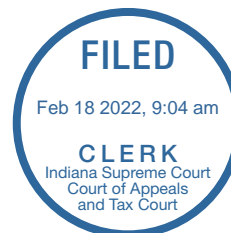


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Justin R. Wall
Wall Legal Services
Huntington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Alexander Stephen Elston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 18, 2022

Court of Appeals Case No.
21A-CR-1653

Appeal from the
Wells Circuit Court

The Honorable
Kenton W. Kiracofe, Judge

Trial Court Cause No.
90C01-1309-FB-12

Vaidik, Judge.

Case Summary

- [1] Alexander Stephen Elston appeals the trial court's order that he serve the balance of his previously suspended sentence for violating his probation for the fourth time in one year. We affirm.

Facts and Procedural History

- [2] In November 2013, Elston, then age nineteen, pled guilty to Class B felony aggravated battery for striking his stepfather in the head with a baseball bat. The trial court sentenced Elston to ten years, with six years executed in the Indiana Department of Correction and four years suspended to probation. *See* Tr. p. 35. The court also ordered him to pay approximately \$25,000 in restitution to his stepfather. Elston later petitioned to modify his sentence, and in March 2015 the court modified the executed portion of his sentence to home detention.
- [3] In January 2020, the State filed a petition to revoke Elston's probation, alleging he failed to pay restitution as ordered. Elston admitted violating his probation, and the trial court extended his probation by one year.
- [4] In September 2020, the State filed a second petition to revoke Elston's probation, alleging he failed to call the drug-test hotline. Elston admitted violating his probation, and the trial court ordered him to serve ten days of his previously suspended sentence.
- [5] In October 2020, the State filed a third petition to revoke Elston's probation, alleging he failed to call the drug-test hotline again. Elston admitted violating

his probation, and the court ordered him to serve six days of his previously suspended sentence.

[6] In December 2020—less than a year after the first petition to revoke was filed—the State filed a fourth petition to revoke Elston’s probation, alleging he committed a new offense, Level 6 felony possession of a narcotic drug, *see* Cause No. 05D01-2012-F6-401, and failed to pay his financial obligations, including restitution and probation fees. A hearing was held in July 2021. At the hearing, evidence was presented that Elston, then age twenty-seven, had pled guilty in F6-401 and been sentenced to two years, with one year executed and one year suspended to probation. Elston then admitted violating his probation. The State asked the trial court to order him to serve the balance of his previously suspended sentence in the DOC. Elston, who testified he could live with his mother and stepfather and had a job lined up, asked the court to place him on home detention or probation. The court found Elston was no longer an appropriate candidate for community supervision given the number of probation violations and the fact that his most recent violation was for committing a new offense. As such, it ordered him to serve the balance of his previously suspended sentence—1,444 days—in the DOC.

[7] Elston now appeals.

Discussion and Decision

[8] Elston contends the trial court shouldn't have ordered him to serve the balance of his previously suspended sentence in the DOC. Trial courts enjoy broad discretion in determining the appropriate sanction for a probation violation, and we review only for an abuse of that discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[9] Elston acknowledges he violated his probation four times in one year. Still, he argues the trial court abused its discretion because of several mitigating factors: (1) he admitted violating his probation; (2) he is young; (3) his criminal history consists of only two convictions; and (4) he had plans for housing and employment if released from incarceration.¹ None of these reasons—alone or together—establish that the court abused its discretion. First, although Elston admitted violating his probation, it was largely pragmatic, as he had already pled guilty in F6-401 and served his executed time for that offense. Second, although Elston was nineteen when he committed the aggravated battery, he was twenty-seven at the probation-revocation hearing. Elston doesn't explain how being twenty-seven is mitigating, especially considering this is his fourth probation violation. Third, it is true Elston's criminal history consists of only two convictions. However, one conviction is for, in the words of the trial court,

¹ In the concluding sentence of the discussion section of his brief, Elston also argues “the duration that he had already been on probation” was mitigating. Appellant's Br. p. 17. Because Elston doesn't develop this argument, it is waived.

a “very serious” Class B felony, and the other is for a felony Elston committed while on probation for that offense. Tr. p. 97. Finally, as for Elston’s testimony that he could live with his mother and stepfather and had a job lined up, those things only mattered if the court was considering some form of community supervision. But the court made clear Elston was no longer an appropriate candidate for community supervision.

[10] Given that Elston violated his probation four times in one year, with the last violation being for the commission of a new offense, the trial court did not abuse its discretion in ordering him to serve the balance of his previously suspended sentence in the DOC.

[11] Affirmed.

Najam, J., and Weissmann, J., concur.