

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James McGee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 13, 2023

Court of Appeals Case No.
22A-CR-2153

Appeal from the Howard Superior
Court

The Honorable Hans S. Pate,
Judge

Trial Court Cause No.
34D04-1604-F5-76

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

- [1] James McGee appeals the sanction imposed by the trial court upon revocation of his probation. He contends that the trial court abused its discretion by ordering him to serve the balance of his suspended sentence. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In April 2016, the State charged forty-eight-year-old McGee with level 5 felony operating a vehicle after a lifetime suspension. McGee pled guilty pursuant to a plea agreement, which provided that he would be sentenced to five years, with not more than two years executed and the balance suspended to probation. In September, the trial court accepted the plea agreement and sentenced McGee to 1,825 days, with 730 days executed on in-home detention and 1,095 days suspended to probation.
- [3] McGee served his in-home detention and was released to probation. In October 2020, the State filed a petition to revoke his suspended sentence alleging that he violated the terms of his probation by failing to comply with drug screening requirements and had been charged with level 6 felony possession of cocaine, class B misdemeanor possession of marijuana, and class C misdemeanor possession of paraphernalia. McGee was in jail from November 4, 2020, to January 7, 2021. On January 7, 2021, McGee admitted to the violations, and the trial court revoked sixty-five days of his suspended sentence, which

represented the time McGee had just been incarcerated, and extended his probation by six months.

- [4] In July 2021, the State filed two petitions to revoke probation. One petition alleged that McGee failed to report to the probation department and failed to comply with drug screening requirements. The other made the identical allegations and added that McGee had been charged with level 6 felony operating while intoxicated with a prior conviction and class A misdemeanor driving while suspended. In April 2022, McGee admitted to the allegations in the two petitions, and by agreement of the parties, the trial court sentenced McGee to work release for forty-five days followed by probation, to be served consecutive to a sentence in another case.
- [5] In June 2022, McGee's work release supervisor filed a notice of noncompliance alleging that McGee had been fired from his job due to poor performance. McGee admitted to the allegations. At the dispositional hearing, McGee admitted that after he was fired, he continued to leave the work-release facility as though he had been employed. Tr. Vol. 2 at 10. As a sanction, McGee requested in-home detention. However, the State argued that in-home detention would be inappropriate because it was a more lenient placement than work release and that McGee had been convicted of crimes in three or four other cases since he had been sentenced in this one and was not a good candidate for anything other than jail. The trial court made several observations that were not able to be accurately transcribed. Nevertheless, the transcript shows that the trial court had reviewed the presentence investigation report, that McGee had

already had his probation extended by six months, that he had previous probation violations, and that he had now violated work release, the highest level of supervision outside of incarceration. Accordingly, the trial court ordered that McGee serve the remainder of his sentence in the Howard County Jail. *Id.* at 13. This appeal ensued.

Discussion and Decision

[6] Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Upon finding that a defendant has violated a condition of his 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). We review the trial court’s sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs “only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances” before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). 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*.

[7] McGee contends that sentencing him to the balance of his suspended sentence for poor job performance is an abuse of discretion. We observe that McGee

violated the terms of his probation multiple times, including the commission of additional crimes, prior to his present failure to comply with work-release conditions. McGee was sentenced for driving with a suspended license, but his probation violations included driving while suspended and driving while intoxicated. Prior to his sentencing for this offense, McGee had over twenty convictions, including driving while suspended, driving while intoxicated, and possession of cocaine. These mirror the crimes he committed while out on probation in this case. We also note that McGee received in-home detention and probation for many of his prior convictions and committed many violations of both. The trial court afforded McGee leniency, but he has repeatedly shown that he is unwilling or unable to comply with the conditions of that leniency. Accordingly, we cannot say that the trial court's decision to revoke McGee's suspended sentence was an abuse of discretion, and therefore we affirm.¹

[8] Affirmed.

Robb, J., and Kenworthy, J., concur.

¹ McGee contends that the trial court's sentencing statement is inadequate. However, he bases this contention on the legal principles and case law involving sentencing, not probation violation sanctions. In any event, we find no merit to his contention, as we were able to discern the reasons for the trial court's decision.