

## 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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Kyle D. Sexton,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 28, 2021

Court of Appeals Case No.  
21A-CR-1021

Appeal from the  
Dearborn Circuit Court

The Honorable  
James D. Humphrey, Judge

Trial Court Cause No.  
15C01-1610-F3-47

**Molter, Judge.**

[1] Kyle D. Sexton (“Sexton”) appeals from the trial court’s order revoking his probation. He raises one issue for our review: whether the trial court abused its discretion when it ordered him to serve the entirety of his previously suspended sentence.

[2] We affirm.

### **Facts and Procedural History**

[3] In May 2017, Sexton was convicted of Level 3 felony robbery resulting in bodily injury and was sentenced to sixteen years, fully suspended to probation. Ex. Vol. at 10. In February 2018, he violated his probation by committing the new offense of driving while suspended, and he was ordered to serve two years of his previously suspended sentence. Appellant’s App. Vol. 2 at 138, 148. He again violated his probation on October 2, 2019, when he submitted a drug screen that tested positive for Buprenorphine. Ex. Vol. at 10.

[4] On July 13, 2020, police were dispatched to a gas station regarding a report that a man had been going in and out of the gas station for a couple of hours and was “passed out” behind the wheel of a vehicle. Tr. at 20. When Greendale Police Department Officer Austin Boggs arrived at the scene, he found Sexton “passed out” in the driver’s seat of his vehicle, which was parked at a gas pump. *Id.* at 2. Officer Boggs was concerned about Sexton’s health and safety and believed that Sexton was showing signs of an overdose. *Id.* Upon opening the door of Sexton’s vehicle, the officer smelled marijuana. *Id.* Officer Boggs

announced himself as a police officer, and after a couple of seconds, Sexton woke up and was groggy. *Id.* at 21–22. When the officer asked Sexton for his name, he initially gave Officer Boggs a false name. *Id.* at 22. Officer Boggs then requested that Sexton step out of the vehicle and began a pat-down search for weapons. *Id.* As Officer Boggs moved toward Sexton’s waistline, Sexton “hunched over and acted like he was gonna pass out again[,]” so Officer Boggs asked him to have a seat back in the vehicle. *Id.* at 22–23.

[5] Another officer arrived, and Officer Boggs went to speak with the gas station clerk, who was concerned that Sexton “may have been stealing” from the gas station. *Id.* at 23. Officer Boggs returned to the vehicle to speak with Sexton and told him what the clerk had said. *Id.* Officer Boggs then asked Sexton to step out of the vehicle again, but Sexton refused several times. *Id.* As Officer Boggs attempted to get Sexton out of the vehicle, he observed a handgun holster in the center console, and at the same time, he saw Sexton reaching into his right pants pocket. *Id.* at 23–24. Officer Boggs grabbed Sexton’s hand and told him that he would be “tased if he didn’t exit the vehicle.” *Id.* at 24. Sexton continued in his refusal to leave the vehicle, and he was therefore tased to get him to comply with the officer’s demands. *Id.* The officers later found a loaded handgun in Sexton’s right pants pocket and more than twenty-eight grams of methamphetamine in his vehicle. *Id.* at 27. Sexton later admitted he had been reaching for the gun in his pocket. *Id.* at 34.

[6] Sexton was charged with several offenses stemming from this incident, and on July 21, 2020, the State filed an amended notice of probation violation, alleging that, along with the previous positive drug screen, Sexton had committed new offenses including: Level 2 felony possession with intent to deliver methamphetamine; Level 4 felony possession of a firearm by a serious violent felon; Level 6 felony possession of a syringe; Class A misdemeanor possession of marijuana; Class B misdemeanor false informing; and Class A misdemeanor resisting law enforcement. Appellant's App. Vol. 2 at 159. Sexton later pleaded guilty to possession of methamphetamine as a Level 3 felony under cause number 15D01-2007-F2-13. Tr. at 4, 8.

[7] On March 30, 2021, Sexton admitted to violating the terms of his probation by submitting a positive drug screen and by committing the new offense of possession of methamphetamine as a Level 3 felony in cause number 15D01-2007-F2-13. *Id.* at 2, 4, 8–9. At the sentencing hearing, Sexton presented evidence that he had obtained his GED, that he had worked construction in the past, that he had a twelve-year-old daughter, and that he had the support of his family. *Id.* at 41, 45, 46. Evidence was also presented that Sexton's sister had recently died, that Sexton had struggled with substance abuse for a long period of time, and that mental health issues ran in his family, although Sexton had never been diagnosed with any mental illness. *Id.* at 41–42, 49. At the conclusion of evidence, the trial court ordered Sexton to serve the remainder of his previously suspended sentence based on the serious nature of Sexton's

probation violations, his lengthy criminal history, and his failure to take advantage of prior opportunities for rehabilitation. *Id.* at 72 –73. Sexton now appeals.

## Discussion and Decision

- [8] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Cain v. State*, 30 N.E.3d 728, 731 (Ind. Ct. App. 2015) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. “Courts in probation revocation hearings ‘may consider any relevant evidence bearing some substantial indicia of reliability.’” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999)). “It is within the discretion of the trial court to determine the conditions of a defendant’s probation and to revoke probation if the conditions are violated.” *Id.* “[A]ll probation requires ‘strict compliance’” because “once the trial court extends this grace and sets its terms and conditions, the probationer is expected to comply with them strictly.” *Id.* at 731–32 (quoting *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008)). “If the probationer fails to do so, then a violation has occurred.” *Id.* If a violation is proven, the trial court must determine if the violation warrants revocation of the probation. *Sullivan v. State*, 56 N.E.3d 1157, 1160 (Ind. Ct. App. 2016). “However, even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation.” *Id.* (quoting *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012)).

[9] If the trial court determines a probationer has violated a term of probation, it may impose one or more of the following sanctions: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person's probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(h). We review a trial court's sentencing decisions for probation violations under an abuse of discretion standard. *Knecht v. State*, 85 N.E.3d 829, 840 (Ind. Ct. App. 2017). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[10] Sexton argues that the trial court abused its discretion when it ordered him to serve the entirety of his previously suspended fourteen-year sentence. He asserts that such a sentence was improper because he showed a desire for substance abuse treatment and that he had strong support from his family. Based on his history of substance abuse issues and possible undiagnosed mental illness, Sexton maintains that he was in need of mental health and substance abuse treatment rather than prolonged incarceration.

[11] In sentencing Sexton, the trial court noted that this was the second probation violation on the underlying robbery conviction and that Sexton had an extensive criminal history. *Id.* at 72. Sexton was previously convicted of Class A misdemeanor possession of marijuana and Class D felony theft in 2009, Class A misdemeanor possession of paraphernalia in 2012, Class A misdemeanor

resisting law enforcement in 2013, Level 6 felony possession of methamphetamine and Level 6 felony possession of a narcotic drug in 2016, and Level 6 felony escape in 2017. *Ex Vol.* at 7–9. From 2010 to 2017, Sexton violated probation multiple times. *Id.* Sexton’s criminal history showed that he is a repeat offender who has also violated probation multiple times and has demonstrated that he is a high risk to reoffend.

[12] Sexton’s underlying conviction in this case was for Level 3 felony robbery resulting in bodily injury, for which he was given a sixteen-year fully suspended sentence, two years of which were already revoked for a previous probation violation. *Id.* at 10; Appellant’s App. Vol. 2 at 138, 148. In July 2020, the State filed an amended notice of probation violation, alleging that, along with a previous positive drug screen, Sexton had committed multiple new offenses stemming from the events of July 13, 2020. Appellant’s App. Vol. 2 at 159. Sexton later pleaded guilty to possession of methamphetamine as a Level 3 felony and admitted to violating the terms of his probation by submitting a positive drug screen and by committing the new offense of Level 3 felony possession of methamphetamine. *Tr.* at 2, 4, 8–9. At the time he committed the possession of methamphetamine offense, Sexton, who was a felon, was also in possession of a firearm, which he attempted to retrieve from his pocket when officers were attempting to get him to exit the vehicle. *Id.* at 23–24, 27, 34.

[13] Sexton alleges that he “was in need of significant mental health and substance abuse treatment rather than prolonged incarceration.” Appellant’s Br. at 11.

However, he reported in his presentence investigation report that he had “never been diagnosed with a mental illness,” and his mother testified that Sexton had never been diagnosed with a mental illness. Ex. Vol. at 12–13; Tr. at 50. As to substance abuse treatment, Sexton had previously been given the opportunity for drug treatment while in jail and had participated in drug court and cognitive behavioral therapy, but he was terminated from drug court after committing multiple violations. Ex. Vol. at 7–8, 11, 13; Tr. at 58.

[14] The violation of a single condition of probation is sufficient to revoke probation. *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*. Here, Sexton committed multiple violations of his probation, including committing Level 3 felony possession of methamphetamine, and his criminal history showed a history of probation violations. Given Sexton’s multiple probation violations, criminal history, and unwillingness to comply with the conditions of his probation, the trial court was within its discretion to determine that Sexton was not a good candidate to continue on probation and to revoke his previously suspended sentence. We, therefore, conclude that the trial court did not abuse its discretion when it ordered him to serve the entirety of his previously suspended sentence.

[15] Affirmed.

Vaidik, N., and May, M., concur.