

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Thomas M. Hill,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 8, 2024
Court of Appeals Case No.
23A-CR-1721
Appeal from the
Hendricks Superior Court
The Honorable
Mark A. Smith, Judge
Trial Court Cause No.
32D04-1611-F4-42

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] Thomas M. Hill appeals the sanction imposed by the trial court for his violations of probation. We affirm.

Facts and Procedural History

- [2] In 2018, Hill pled guilty to Level 4 felony burglary and admitted being a habitual offender. The trial court sentenced him to fourteen years, with three years in prison, seven years on Hendricks County Work Release, and four years suspended to probation. In 2020, Thomas violated the conditions of work release by committing a new offense (failure to register as a sex offender). As a sanction, the trial court ordered him to serve an additional 180 days on work release and reduced his probation by 180 days.
- [3] In 2021, Hill again violated the conditions of work release, this time for escaping. The court ordered him to serve 2,331 days in prison and to “return[] to probation for 1280 days.” Appellant’s App. Vol. II p. 55. The court said Hill would be eligible for a sentence modification if he completed Recovery While Incarcerated. Hill completed Recovery While Incarcerated, and in May 2022 the trial court modified his sentence “to 2680 days, with 2680 days suspended and 1280 days of probation.” *Id.* at 65-66.

[4] Hill did well right after his sentence was modified. But between September 2022 and May 2023, the State filed several notices of probation violation alleging, among other things, that Hill tested positive for drugs and missed drug screens. After the first notice was filed in September 2022, Hill agreed to go to an inpatient program. However, he left without completing the program. In January 2023, Hill returned to an inpatient program, which he completed in February. Later that month, Hill started an outpatient program, which he did not complete.

[5] A hearing on the violations was held in June 2023. At the time, Hill was attending Cummins Behavioral Health but had tested positive for oxycodone in May. Hill admitted to several violations. He testified that he was an addict, had been using fentanyl and methamphetamine, and had overdosed and woken up in the hospital fifteen times over the past six months. Tr. Vol. II p. 47. Hill acknowledged that the only time he had been “sober and able to survive” was when he was incarcerated. *Id.* at 49. He knew he would have to spend time in prison for his probation violations and that he didn’t qualify for work release. He asked the trial court to order him to serve 545 days in prison followed by treatment as a condition of probation. The State, on the other hand, asked the court to order Hill to serve his entire suspended sentence—2,680 days—in prison “just frankly to save his own life.” *Id.* at 59. The court found middle ground:

I see no reason to send you to prison for 2,680 days. Probably should. Probably should because I don’t think you’re going to

follow the rules at probation. If I put you back out on probation you're not going to follow them. You've got a family that's dying to support you. Sister's been here multiple times, your father's been here multiple times. You have every opportunity available to you. You've been to recovery twice and yet here we are. But I still don't feel like 2,680 days is the answer. I think [the State is] right. No matter what number I put down it's just a matter of keeping you alive for that long. I think even after you're out I'm probably going to . . . see you again. I'm probably going to read about you in the obituaries which is sad. I think the appropriate number that I've, that I've arrived at I think [defense counsel's] number's too low and I think the State's number's too high. . . . I've arrived at . . . 1,280 days given the nature of the violations. None of that time is suspended. Probation is terminated unsuccessfully. . . . Prove me wrong. I do not want to read about you. I do not want to read about another thirty something year old in the paper

Id. at 61-62.

[6] Hill now appeals.

Discussion and Decision

[7] Hill challenges the sanction imposed for his violations of probation. 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).

[8] Hill acknowledges that incarceration is the only thing that has kept him alive but claims the trial court should have ordered him to serve a shorter amount of time in prison (545 days instead of 1,280 days) followed by probation because

“incarceration will not last forever.” Appellant’s Br. p. 8. But as the trial court found, Hill “got worse” on probation. Tr. Vol. II p. 61. He overdosed fifteen times **despite** undergoing treatment.

[9] Hill cites *Hoak v. State*, 113 N.E.3d 1209 (Ind. 2019), in support of his argument that 1,280 days in prison is too long. But *Hoak* is distinguishable. There, the defendant was sentenced to three years for possessing methamphetamine and the balance of her suspended sentence in another case (294 days) for violating her probation by possessing the meth. The record, however, showed that the defendant had never received any court-ordered substance-abuse treatment. In a consolidated appeal, our Supreme Court remanded the case with instructions for the trial court to determine whether the defendant was eligible for substance-abuse treatment and, if so, to order “half of her sentence to be executed in Community Corrections.” *Id.* at 1210.

[10] Here, Hill has already been given the benefit of work release, probation, and substance-abuse treatment both in and out of prison. Given Hill’s failures at these opportunities and continued overdoses, the trial court believed that incarceration was the only way to keep him alive. It was not an abuse of discretion for the court to order Hill to serve 1,280 days in prison, less than half of what the State requested.

[11] Affirmed.

May, J., and Kenworthy, J., concur.