

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jacob D. VanderHorst
Likes Law Office, LLC
Auburn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David B. Henson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 6, 2023

Court of Appeals Case No.
22A-CR-2277

Appeal from the
DeKalb Superior Court

The Honorable
Monte L. Brown, Judge

Trial Court Cause No.
17D02-2004-F5-33

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] David B. Henson appeals the trial court's order that he serve his entire suspended sentence in prison for violating his probation. We affirm.

Facts and Procedural History

- [2] In October 2021, Henson pled guilty to Level 5 felony robbery. On November 12, 2021, the trial court sentenced him to six years, with 126 days executed (time served) and the rest suspended to probation.
- [3] Eighteen days later, on November 30, the probation department petitioned to revoke Henson's probation. The petition alleged that Henson's whereabouts were unknown and that he had failed to update his address (he was no longer at the address he had provided on November 12) and attend his November 23 probation appointment (which had been scheduled on November 12). A warrant was issued for Henson's arrest, and he was arrested on the warrant on May 26, 2022. The probation department supplemented the petition to revoke to add that Henson had tested positive for amphetamine, methamphetamine, and THC on May 26.
- [4] In August 2022, Henson admitted violating his probation. The trial court scheduled a sanction hearing for later that month so that Henson could explore placement options. At the sanction hearing, Henson, who was fifty-two years old and homeless, testified that he had been accepted at a halfway house, Serenity House, and asked the trial court to place him there. Henson's

probation officer, however, believed that Henson should serve his entire suspended sentence in the Department of Correction:

[Henson has] been convicted of twenty five (25) misdemeanors and fourteen (14) felonies. He's been on probation eighteen (18) times. Those opportunities, he was given substance abuse treatment, which he was revoked for. He was told to participate in mental health treatment which he did not comply with. He essentially keeps getting opportunities and keeps showing why he should not get further opportunities. He did actually nothing on probation. There's no reason to give him any sort of breaks or cuts. Due to his behavior and due to his past behavior, there's no reason to believe he would participate in any sort of further treatment

Tr. p. 54 (cleaned up). The State added that of the eighteen times Henson had been on probation, he violated it fifteen times. Henson had also violated home detention (including a conviction for felony escape) and parole. In line with the probation department's recommendation, the court ordered Henson to serve his entire suspended sentence in the DOC:

[Defense counsel] has done a great job for you I think considering your history and your almost complete failure to comply with probation. [Defense counsel's] a good lawyer, but he's not a magician. He can't pull a rabbit out of a hat and I think that's what's really going on here. You've been part of the system for a long time. You know what's expected of you. You've been given multiple opportunities and you've not taken advantage of those. At some point, the State, Probation just throws up their hands, there's nothing more we can do and I think that's where you've taken them. I think, under the circumstances . . . I've got little or no other alternative than to revoke your probation and

order that the balance of your executed sentence . . . be served in its entirety.

Id. at 57 (cleaned up).

[5] Henson now appeals.

Discussion and Decision

[6] Henson contends the trial court shouldn't have ordered him to serve his entire suspended sentence—just shy of six years—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).

[7] Henson claims the trial court should have imposed a lesser sanction, like a halfway house. He points out that he was homeless when he started probation in November 2021, has mental-health problems, and committed “minor” violations of probation. Appellant's Br. p. 12. Henson, however, made these same arguments to the trial court. The court was ultimately persuaded that the fact that Henson had not taken advantage of the multiple opportunities he had been given for his thirty-nine convictions—including violating probation (fifteen times), parole, and home detention—and had violated his probation in this case by no-showing a mere two weeks after it started warranted him serving his entire suspended sentence in the DOC and not in a halfway house. Although Henson says he had not been placed in a halfway house before, his failures on

probation, parole, and home detention suggest that things wouldn't be much different in a halfway house.¹ The court did not abuse its discretion.

[8] Affirmed.

Tavitas, J., and Foley, J., concur.

¹ Henson says this case is like *Johnson v. State*, 62 N.E.3d 1224 (Ind. Ct. App. 2016), where we reversed the trial court's decision to order the defendant to serve the remainder of his executed sentence in the DOC instead of on work release. *Johnson* is distinguishable from this case on several grounds, including that the defendant did not have a substantial criminal history like Henson.