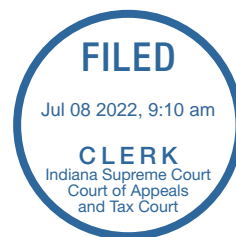


MEMORANDUM DECISION

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

Eric Grzegorski
Howard County Public Defender
Kokomo, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Carlton D. Wilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 8, 2022

Court of Appeals Case No.
22A-CR-236

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause No.
34C01-1208-FB-158

Mathias, Judge.

- [1] The Howard Circuit Court revoked Carlton Wilson's probation and ordered him to serve the balance of his previously suspended eight-year sentence

executed in the Department of Correction. Wilson appeals and argues that the trial court abused its discretion by ordering him to serve his previously suspended sentence in the DOC.

[2] We affirm.

Facts and Procedural History

[3] In 2013, Wilson was convicted of Class B felony burglary. The trial court sentenced him to twelve years, with four years executed and eight years suspended to probation. The court also ordered Wilson to seek drug and alcohol treatment. Wilson began his probation on May 29, 2014.

[4] Between May 29, 2014, and December 15, 2021, Wilson violated his probation numerous times. And since his probation began, Wilson has been convicted of four additional felonies and five misdemeanors. Most of those offenses were related to alcohol or drug use. As a result of his probation violations and convictions, Wilson has served short periods of executed time in the Department of Correction, community corrections, or the Howard County Jail.

[5] On October 1, 2021, Wilson was arrested for operating while intoxicated and reckless driving. Instead of reporting to his probation officer as scheduled, Wilson entered a treatment facility. His probation officer believed that Wilson was using treatment to avoid the consequences of his criminal behavior because Wilson sought treatment only after he “knew he was in a lot of trouble[.]” Appellant’s App. p. 126.

[6] On October 18, 2021, the State filed its fifth petition to revoke Wilson’s probation because Wilson failed to report for five drug screens and had committed the October 1 driving offenses. Wilson admitted the violation, and the trial court held a sentencing hearing on January 12, 2022. After reviewing Wilson’s prior probation violations and incarcerations, the court determined that Wilson “is not a suitable candidate for probation or community corrections, as he has continually used illegal substances, committed new crimes, or otherwise violated his probation while serving probation in this case.” Appellant’s App. pp. 129; *see also* Tr. p. 6. The court gave Wilson credit for the executed time he had served for his prior probation violations and ordered him to serve the balance of his previously suspended sentence totaling 2,248 days in the Department of Correction.

[7] Wilson now appeals.

Discussion and Decision

[8] It is well-established that probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Id.* “If this discretion were not afforded to trial courts and sentences

were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.*

- [9] Probation revocation is a two-step process. First, the trial court must make a factual determination that the defendant violated a condition of probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). And violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation. *Woods*, 892 N.E.2d at 640. When a defendant violates 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)*.
- [10] Wilson argues that the trial court abused its discretion when it sentenced him to serve 2,248 days, the balance of his previously suspended eight-year sentence, executed in the Department of Correction. Wilson claims that the trial court should have sentenced him to placement in a treatment facility or purposeful incarceration because he has a substance abuse problem.
- [11] Initially, we note that Wilson did not request this placement at his revocation hearing. Wilson stated, “I know I have to do some time in the DOC, but I’m asking for the remainder to be done on house arrest because I do have a home” Tr. p. 5.
- [12] Moreover, the State observes that the trial court ordered Wilson to complete drug and alcohol treatment on three separate occasions throughout this case.

See Appellee's Br. at 14; Appellant's App. pp. 40, 80, 105. And our court has observed that the Department of Correction "offers multiple programs, including drug and alcohol classes, designed to rehabilitate inmates." See *Butler v. State*, 951 N.E.2d 255, 262 (Ind. Ct. App. 2011).

[13] In the many years Wilson has been released to probation, he has failed to do as the court ordered and participate in drug and alcohol treatment. Instead, he has continued to violate his probation and commit new criminal offenses. The trial court was lenient with Wilson and imposed short periods of executed time in community corrections or the county jail after his first four revocations of probation. Wilson did not take advantage of the many chances he was given to rehabilitate himself.

[14] For all of these reasons, we conclude that the trial court acted within its discretion when it revoked Wilson's probation for the fifth time and ordered him to serve the balance of his previously suspended sentence in the Department of Correction.

[15] Affirmed.

Brown, J., and Molter, J., concur.