

## MEMORANDUM DECISION

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# IN THE Court of Appeals of Indiana

Shelby Dale Bense,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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October 7, 2024

Court of Appeals Case No.  
24A-CR-1323

Appeal from the Decatur Circuit Court  
The Honorable Kenneth Bass, Magistrate

Trial Court Cause No.  
16C01-2110-F6-1045

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**Memorandum Decision by Judge Vaidik**  
Chief Judge Altice and Judge Crone concur.

**Vaidik, Judge.**

## Case Summary

- [1] Shelby Dale Bense appeals the sanction imposed by the trial court for her violation of probation. We affirm.

## Facts and Procedural History

- [2] In October 2021, the State charged Bense with Level 6 felony possession of a narcotic drug and Class C misdemeanor reckless driving. At the time of the offenses, Bense was pregnant and on probation in two felony cases (one for Level 6 felony theft and Class A misdemeanor resisting law enforcement, the other for Level 6 felony possession of a narcotic drug). She eventually pled guilty, and a sentencing hearing was held in February 2024. By that time Bense was pregnant again, about one month along. The trial court sentenced her to 540 days incarceration, all suspended to probation.
- [3] Just one week later, the State petitioned to revoke Bense's probation. The State alleged that she violated probation by (1) failing to report to the probation office and (2) being arrested for and charged with possession of methamphetamine and theft, both Level 6 felonies, in Bartholomew County (cause number 03C01-2402-F6-974). A revocation hearing was held in May. Bense admitted that she had failed to report to probation after sentencing. She also admitted that she had been arrested for and charged with new offenses in Bartholomew County and that probable cause existed to support those charges, though she

“maintained her innocence” and had pled not guilty. Tr. p. 17.<sup>1</sup> As to the sanction, Bense testified that her pregnancy was high risk, with a due date of October 16, and asked the court to return her to probation or place her on home detention. The State recommended that Bense serve all 540 days of suspended time in jail or the Department of Correction (DOC), arguing that releasing her would present a greater threat to her pregnancy given her substance-abuse history. The trial court ordered Bense to serve all 540 days in the DOC.

[4] Bense now appeals.

## Discussion and Decision

[5] Bense contends the trial court shouldn’t have ordered her to serve her entire suspended sentence. 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). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

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<sup>1</sup> The Bartholomew County case is still pending. While Bense admitted, as the State alleged, that she was “arrested and charged” with the new offenses, her probation conditions provided that she “must not commit any criminal act[.]” Appellant’s App. Vol. II p. 21. Her admission that she was arrested and charged did not establish that she “committed” the new offenses. *See Jackson v. State*, 6 N.E.3d 1040, 1042 (Ind. Ct. App. 2014). And while she also admitted there is probable cause to support the new charges, in probation-revocation proceedings, the State is required to prove new offenses by a preponderance of the evidence, a higher burden than probable cause. *See Heaton v. State*, 984 N.E.2d 614, 616-17 (Ind. 2013). Though Bense didn’t raise these issues in the trial court and doesn’t raise them on appeal, we caution the State and the trial court to abide by these requirements in the future.

[6] Bense argues that the trial court should have imposed time already served and released her to home detention because (1) her violations weren't serious and (2) incarceration makes her pregnancy even more high risk. We disagree in both respects. Within days of being sentenced to probation, Bense had failed to report to the probation office and picked up two new felony charges. And given Bense's repeated criminal conduct while pregnant, most of it involving hard drugs, it is reasonable to believe that incarceration gives her higher odds of a successful pregnancy and birth. Finally, the fact that Bense was on probation in two other felony cases when she committed the underlying offenses reinforces that she is not a good candidate for less restrictive sanctions. Bense has not shown that the trial court abused its broad discretion by imposing all her suspended time.

[7] Affirmed.

Altice, C.J., and Crone, J., concur.

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