

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

John Garbarini,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 20, 2023

Court of Appeals Case No.
22A-CR-2675

Appeal from the Ripley Superior
Court

The Honorable Jeffrey Sharp,
Judge

Trial Court Cause No.
69D01-2203-F6-45

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

- [1] John Garbarini appeals the sanction imposed by the trial court upon revocation of his probation. He contends that the trial court abused its discretion when it ordered him to serve almost the entirety of his previously suspended sentence in the Department of Correction. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In March 2022, the State charged Garbarini with level 6 felony unlawful possession of a syringe and class B misdemeanor possession of marijuana. On June 29, 2022, Garbarini pled guilty to the level 6 felony in exchange for dismissal of the other count. That same day, the trial court sentenced him in accordance with the plea agreement to 910 days, with 866 days suspended to probation. Garbarini was ordered to report to probation for an intake appointment on July 12, 2022.
- [3] Garbarini failed to appear for his intake appointment. The probation department sent him a letter instructing him to appear on July 20, 2022, for an intake appointment. Garbarini again failed to appear. The following day, the probation department filed a notice of probation violation alleging that Garbarini had violated the terms and conditions of his probation by twice failing to report for a probation intake appointment. Accordingly, the trial court issued a warrant for Garbarini's arrest.
- [4] Garbarini turned himself in on October 4, 2022. The trial court held a probation revocation hearing the following week. Garbarini admitted to violating his

probation and stated that he knew “a hundred percent” that he was supposed to report to probation. Tr. Vol. 2 at 12. Garbarini acknowledged that he deserved a sanction for his violation, and his counsel requested that the trial court order him to execute ninety days of his previously suspended sentence. At the conclusion of the hearing, the trial court revoked Garbarini’s probation and ordered him to serve 730 days of his previously suspended sentence, with sixteen days of good time credit. The trial court ordered that probation would be terminated upon completion of the sentence. This appeal ensued.

Discussion and Decision

- [5] Garbarini appeals the sanction imposed by the trial court upon revocation of his probation. Probation is a matter of grace left to trial court discretion. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Upon finding that a defendant has violated 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). We review the trial court’s sentencing decision following the revocation of probation for an abuse of discretion. *Cox v. State*, 850 N.E.2d 485, 489 (Ind. Ct. App. 2006). An abuse of discretion occurs “only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances” before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

- [6] Garbarini argues on appeal that the trial court’s decision to revoke almost the entirety of his previously suspended sentence was too harsh in light of the “technical nature” of his probation violation, his “ready admission” to the violation, and the “minimal conduct involved in his underlying offense[.]” Appellant’s Br. at 10. However, it is well established that so long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the court may properly order execution of all or any part of a suspended sentence upon a finding of a single violation by a preponderance of the evidence. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*.
- [7] Here, based upon Garbarini’s admitted monthslong failure to report to intake to begin his probation, the trial court was well within its discretion to determine that he was no longer a good candidate for probation. As noted by the trial court, Garbarini “never even tried to start his probation[.]” and “there is no other reason other than complete apathy on his part.” Tr. Vol. 2 at 15. Indeed, Garbarini provided the court with no explanation for what he was doing in the months following sentencing while he was not reporting to probation, and the trial court reasonably discerned that such behavior indicated that he was simply “unwilling to participate in [his] own rehabilitation.” *Id.* at 16. Under the circumstances, we conclude that the trial court did not abuse its discretion when it ordered Garbarini to serve almost the entirety of his previously suspended sentence in the Department of Correction.

[8] Affirmed.

Robb, J., and Kenworthy, J., concur.