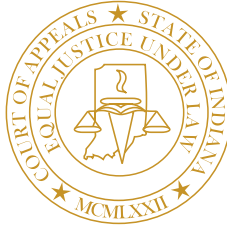


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Alan J. Busse,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

November 15, 2024

Court of Appeals Case No.
24A-CR-1410

Appeal from the Dearborn Superior Court
The Honorable Jonathan Neil Cleary, Judge

Trial Court Cause No.
15D01-2306-F5-40

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

Altice, Chief Judge.

Case Summary

[1] Alan J. Busse appeals the sentence imposed following the violation of his probation. Busse maintains that the trial court abused its discretion in ordering him to serve a portion of his previously suspended sentence in the Indiana Department of Correction (DOC).

[2] We affirm.

Facts and Procedural History

[3] Busse and C.F. were involved in an “on and off again relationship” that began in 2017. *Transcript Vol. II* at 15. In March 2023, C.F. obtained an order of protection against Busse that barred him from contacting her.

[4] On June 4, 2023, Busse went to C.F.’s Greendale residence. When C.F. told Busse to leave, he refused and threatened to “shoot or blow up” anyone who would “force him to leave.” *Appellant’s Appendix Vol. II* at 16. The police were contacted, and Busse was transported to a local hospital for a detention hold. While executing a search warrant at C.F.’s residence later that day, police officers seized drug paraphernalia, “white crystal-like rocks,” and a loaded 9mm handgun. *Id.* C.F. asserted those items belonged to Busse.

[5] As a result of the incident, the State charged Busse with various criminal offenses. Busse entered into a plea agreement (Agreement) with the State in November 2023, wherein he agreed to plead guilty to one count of unlawful

carrying of a handgun, a Level 5 felony, in exchange for dismissal of the remaining charges. The Agreement further provided that Busse would be placed on probation with a six-year sentence of “time served at sentencing.” *Id.* at 50-52. The trial court accepted the Agreement, and at the sentencing hearing on December 7, 2023, the trial court imposed the six-year term of imprisonment, calculated Busse’s credit time to be 247 days, and suspended 1943 days to probation with the condition that Busse complete mental health/substance abuse treatment and commit no additional criminal offenses.

[6] On December 16, 2023—nine days after being released from jail—Busse sent text messages to C.F. in violation of the protective order. Busse began those texts with “I don’t know why u have to do me like that. I just got a job . . . in Harrison. I haven’t done anything but try to stay OUT of trouble since I got back with you.” *State’s Exhibit 1*. Busse then forwarded to C.F. an old photo of the two of them walking together. Busse’s final text to C.F. read, “remember those days [sad face emoji] all I ever wanted to do was marry you. I do apologize for putting you in the positions I did, as far as getting you pregnant and acting the way I did. I’m sorry. I’ll always love you [C.F.] but if we don’t want the same things in life that’s fine. Just don’t wreck mine. Call me back if you want.” *Id.*

[7] Three days later, the State filed a petition to revoke Busse’s probation, alleging that the text messages violated the terms of his probation and constituted the crime of invasion of privacy. The State then amended the petition on May 9,

2024, alleging that Busse had committed two counts of invasion of privacy, a Class A misdemeanor.

- [8] At a combined disposition and admission hearing on May 17, 2024, the trial court took judicial notice of its file and heard evidence regarding the text messages, the order of protection, and the nature of the relationship between C.F. and Busse. C.F. testified that Busse had been violent toward her in the past and that she had reported that incident to the police. Busse admitted that he violated probation by committing one count of invasion of privacy, and the State agreed to dismiss the underlying criminal charges.
- [9] In considering the proper sanction, the trial court noted that Busse remained a threat to C.F. and commented that cases involving continued violations of protective orders “can end tragically, horribly.” *Transcript Vol. II* at 32. The trial court noted that Busse had been violent toward C.F., and that the invasion of privacy allegations were serious because they established Busse’s disregard of a court order “just days after he was released.” *Id.* at 32-33.
- [10] The trial court also noted Busse’s extensive criminal history and his prior probation violations. Busse had felony convictions for possession of methamphetamine, possession of cocaine, dealing in marijuana, and operating a vehicle under the influence of a controlled substance. Busse also had prior misdemeanor convictions for operating a vehicle while intoxicated and carrying a handgun without a license. Busse also violated the terms of his probation or community corrections sentences on five prior occasions, and he failed to

complete several court-ordered substance abuse treatment programs. At the conclusion of the hearing, the trial court ordered Busse to serve 1578 of the 1943 previously suspended days at the DOC.

[11] Busse now appeals.

Discussion and Decision

[12] Busse claims that the trial court abused its discretion by imposing an overly harsh sanction for his probation violation. In short, Busse maintains that he should remain on probation and not serve any executed time.

[13] Probation is a matter of grace, not a right to which a criminal defendant is entitled. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). Sentencing decisions for probation violations are left to the trial court’s discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). We reverse only if the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Id.* The abuse of discretion standard applies both to determination about whether the defendant violated probation and to sanctions. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*.

[14] Upon finding a probation violation, the trial court may impose one or more of the following sanctions: “(1) Continue the person on probation, with or without modifying or enlarging the conditions[;] (2) Extend the person’s probationary period for not more than one . . . year beyond the original probationary period[;] (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h). Although a

defendant's probation may be revoked on evidence of violation of a single condition, "the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation." *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Additionally, we will consider the defendant's criminal history and past probation violations when reviewing whether the trial court's sanction is appropriate. *See Utley v. State*, 167 N.E.3d 777, 784 (Ind. Ct. App. 2021), *trans. denied*.

- [15] In this case, the record demonstrates that Busse's criminal history includes four prior felony convictions and two misdemeanors. Those offenses—including the convictions for driving while intoxicated—endangered others. Busse's probation had also been revoked five times prior to the instant violation. Busse was afforded the opportunity to complete substance abuse programs on two occasions, but he repeatedly failed at those efforts and violated the terms of his probation and community corrections placements. Hence, Busse's history of repeated violations, despite a court's repeated efforts at providing him opportunities at rehabilitation, supported the trial court's sanction. *See Overstreet*, 136 N.E.3d at 264 (one factor supporting the trial court's sanction is when the defendant has failed to be rehabilitated despite prior opportunities). Moreover, the evidence at the hearing established that Busse had been violent toward C.F., and he committed a new criminal offense only two weeks after being released from jail. Busse's disrespect of the trial court's authority was clearly established when he ignored the order of protection and refused to abide by the terms of his probation.

[16] In sum, Busse’s extensive criminal history, his multiple probation violations, the failed attempts at rehabilitation, and the circumstances of the current violation, all demonstrate that the trial court’s decision to order Busse to execute a portion of his previously suspended sentence at the DOC was not an abuse of discretion.

[17] Judgment affirmed.

Vaidik, J. and Crone, Sr. J., concur.

ATTORNEY FOR APPELLANT

R. Patrick Magrath
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana