

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert E. Ward, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2021

Court of Appeals Case No.
21A-CR-340

Appeal from the Decatur Circuit
Court

The Honorable Timothy Day,
Judge

Trial Court Cause No.
16C01-1511-F2-733

Pyle, Judge.

Statement of the Case

- [1] Robert E. Ward, Jr. (“Ward”) appeals the revocation of his probation, arguing that the trial court abused its discretion by ordering him to serve part of his previously suspended sentence. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether the trial court abused its discretion by ordering Ward to serve part of his previously suspended sentence.

Facts

- [3] In November 2015, the State charged then sixty-three-year-old Ward with: Count 1, Level 2 felony dealing in methamphetamine, which was based on his possession of more than ten grams of methamphetamine with intent to deliver; Count 2, Level 3 felony possession of methamphetamine, which was based on his possession of more than ten grams of methamphetamine; and Count 3, Level 6 felony maintaining a common nuisance. Almost two years later, in June 2017, Ward pled guilty, pursuant to a plea agreement, to the Level 3 and Level 6 felonies in exchange for the State’s dismissal of the Level 2 felony charge. The parties agreed that Ward would receive an executed sentence of eleven (11) years for his Level 3 felony conviction and a concurrent sentence of two (2) years for his Level 6 felony conviction, with both sentences to be served at the Indiana Department of Correction (“DOC”). Additionally, the parties

agreed that the trial court would “order[]” for Ward to be placed in the DOC’s Purposeful Incarceration program. (App. Vol. 2 at 176). The trial court accepted Ward’s guilty plea and entered a sentence pursuant to the plea agreement. Additionally, when sentencing Ward, the trial court informed Ward that it would “consider a petition for sentence modification depending upon [Ward’s] participation and progress in [the Purposeful Incarceration] program.” (App. Vol. 2 at 209).

[4] Thereafter, in May 2018, Ward filed a petition to modify his sentence based upon his completion of the Purposeful Incarceration program. Following a hearing, the trial court granted Ward’s petition and modified his sentence in October 2018. Specifically, the trial court suspended 2,629 days (or seven plus years)¹ of Ward’s original sentence to probation and placed Ward on electronically-monitored home detention for the first year of probation.

[5] In February 2019, Ward tested positive for methamphetamine, but the State did not file a notice of probation violation. Later, in September 2020, Ward again had a positive drug test. The State filed a notice of probation violation on September 22, 2020, and a supplemental notice on September 30, 2020. The State alleged that Ward had violated his probation by testing positive for methamphetamine and amphetamine and by committing additional criminal

¹ The trial court’s order modifying Ward’s sentence indicated that 2,873 days were suspended to probation. Apparently due to earned credit time calculations, the trial court later modified the time suspended to probation to 2,629 days.

offenses in September 2020. Specifically, the State alleged that Ward had been charged, in two separate causes, with possession of methamphetamine and maintaining a common nuisance.² Ward was arrested and later released on bond in this probation violation proceeding.

[6] In December 2020, the trial court held a probation revocation hearing, during which Ward admitted that he had violated probation. Specifically, Ward admitted that he had tested positive for methamphetamine and amphetamine and that there was probable cause to support the possession of methamphetamine and maintaining a common nuisance charges in the two causes. Based on Ward's admissions, the trial court determined that Ward had violated his probation.

[7] During the disposition hearing, then sixty-nine-year-old Ward told the trial court that he had gone to some group therapy sessions when he had first been placed on probation but that he had then "backslid." (Tr. Vol. 2 at 21). Ward also told the trial court that he had sought drug and alcohol treatment while out on bond on this probation violation, and he asked the trial court to keep him on probation.

[8] The trial court declined to keep Ward on probation and addressed Ward, in part, as follows:

² Ward was charged with Level 5 felony possession of methamphetamine and Level 6 felony maintaining a common nuisance in causes 16C01-2009-F5-1129 and 16C01-2009-F5-1142.

Well, what bothered me at the very beginning of all this, you know, you had several charges, big charges. You have actually a [Level] 3 felony, due to the amount of methamphetamine that was found at your house. But what made it, I guess bad for me is so many other people were involved in it. So many other people got their lives turned upside down, by being able to hang out at your house and have access to meth. . . . I mean a lot of people suffered because you opened your doors up, and your house up to meth. And I felt like you got a really big break with this purposeful incarceration. . . . When you got modified out, I felt like, you know, that would have been something that you really should have taken to hear because of your age. . . . And what bothers me is it's the same -- it's almost like a broken record. It's the same thing. You're there at this place with other people and meth. Different people. And you know, it's just something I can't -- I can't do nothing. I mean you know that.

(Tr. Vol. 2 at 34-35). The trial court revoked 2,109 days of Ward's previously suspended 2,629-day sentence and ordered Ward's probation "terminated as unsuccessful[.]" (App. Vol. 3 at 57). The trial court again "authorize[d]" Ward to be placed in the DOC's Purposeful Incarceration program and informed Ward that the court would "consider a petition for sentence modification depending upon [Ward's] participation and progress in [the Purposeful Incarceration] program." (App. Vol. 3 at 57). Ward now appeals.

Decision

[9] Ward argues that the trial court abused its discretion by ordering him to serve part of his previously suspended sentence. We disagree.

[10] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Id.*; *see also* IND. CODE § 35-38-2-3(a). Indeed, 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). Upon determining that a probationer has violated a condition of 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). “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.” *Prewitt*, 878 N.E.2d at 188. “If this discretion were not given to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.* As a result, we review a trial court’s sentencing decision from a probation revocation for an abuse of discretion. *Id.* (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[11] The record reveals that the trial court had a sufficient basis for its decision to order Ward to serve part of his previously suspended sentence. Here, Ward initially pled guilty to two of the three methamphetamine-related charges brought against him, and he agreed to an aggregate eleven-year executed sentence. The trial court showed Ward leniency by modifying his sentence

upon Ward's completion of the Purposeful Incarceration program. Specifically, the trial court suspended 2,629 days of Ward's original sentence to probation. Ward, however, squandered this opportunity. While on probation, Ward used methamphetamine and was charged, in two separate causes, with possession of methamphetamine and maintaining a common nuisance, which were the same offenses to which he had pleaded guilty. Ward admitted that he had violated probation by testing positive for methamphetamine and amphetamine and admitted that probable cause existed for charges against him in the two causes.

[12] Based on the record before us, we conclude that the trial court did not abuse its discretion by ordering Ward to serve part of his previously suspended sentence. For the foregoing reasons, we affirm the trial court's revocation of Ward's probation and the order revoking part of Ward's previously suspended sentence.

[13] Affirmed.

Bailey, J., and Crone, J., concur.