

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

David Daffron,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

December 14, 2022

Court of Appeals Case No.  
22A-CR-1937

Appeal from the Henry Circuit  
Court

The Honorable Kit C. Dean Crane,  
Judge

Trial Court Cause No.  
33C02-1904-F5-29

**Crone, Judge.**

## Case Summary

- [1] David Daffron 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 the balance of his previously suspended sentence in the Department of Correction. Finding no abuse of discretion, we affirm.

## Facts and Procedural History

- [2] In April 2019, the State charged Daffron with one count of level 6 felony failure to register as a sex offender and one count of level 5 felony failure to register as a sex offender. Daffron entered into a plea agreement in which he agreed to plead guilty to the level 5 felony in exchange for dismissal of the level 6 felony. The parties agreed to a fully suspended sentence of three years. In September 2019, the trial court accepted the agreement and sentenced Daffron accordingly.
- [3] On March 17, 2022, the Henry County Probation Department filed a notice of probation violation alleging that Daffron violated the terms and conditions of his probation by failing to report to his probation officer as required. An evidentiary hearing was held on July 14, 2022. The evidence indicated that Daffron failed to report for at least six scheduled appointments with his probation officer between October 2021 and February 2022. The trial court concluded that Daffron violated his probation and ordered him to serve the balance (963 days) of his previously suspended sentence in the Department of Correction. This appeal ensued.

## Discussion and Decision

- [4] Daffron 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).
- [5] Daffron’s sole assertion on appeal is that the trial court’s decision to revoke the entirety of his previously suspended sentence was too harsh given the merely “technical nature” of his probation violation. Appellant’s Br. at 8. However, 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 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*. In light of Daffron’s undisputed multiple missed appointments with his probation officer, the trial court was well within its discretion to determine that Daffron

was not a good candidate to continue on probation. As noted by the trial court, Daffron’s excuses for missing appointments were not credible, and it was simply unacceptable for him to go “off the radar screen for a number of months” while serving probation. Tr. Vol. 2 at 27. We therefore conclude that the trial court did not abuse its discretion when it ordered Daffron to serve the balance of his previously suspended sentence in the Department of Correction.

[6] Affirmed.

May, J., and Weissmann, J., concur.