MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Victor Lee Jordan,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

April 1, 2024

Court of Appeals Case No.
23A-CR-1643

Appeal from the
LaPorte Superior Court

The Honorable
Richard L. Stalbrink, Jr., Judge

Trial Court Cause No.
46D02-1905-F3-635

Memorandum Decision by Senior Judge Shepard
Chief Judge Altice and Judge May concur.

Shepard, Senior Judge.

Statement of the Case

[1] Victor Lee Jordan appeals from the trial court's order revoking his probation, contending the trial court erroneously based the revocation on violations that occurred as a result of Jordan's indigency. Finding no error, we affirm.

Facts and Procedural History

[2] After a jury trial and Jordan's subsequent admitted enhancing circumstance of a prior felony conviction, he was convicted of one count of Level 5 felony possession of cocaine and one count of Level 6 felony resisting law enforcement. The court sentenced Jordan to an aggregate sentence of seven and one-half years. The court also recommended placement in Recovery While Incarcerated (RWI), with the opportunity for Jordan to file a petition for a sentence modification after completing the RWI Program or serving four years of his sentence.

[3] Eight months later, Jordan filed a petition for sentence modification, alleging he had maintained good conduct and gainful employment during his incarceration. The DOC also confirmed Jordan's completion of the RWI

Program. The court granted Jordan's petition and suspended the remainder of his sentence to probation with recommended placement in Re-Entry Court.

[4] Less than three months later, the State filed a petition for revocation of Jordan's probation, citing his failure to call the drug test line on more than forty occasions and to report to scheduled drug tests on ten occasions over the course of two months. At the revocation hearing, Jordan admitted to the allegations. However, he stated that he did not have a driver's license and was unable to obtain transportation from his home to the drug test site. The trial court's amended dispositional order sentenced Jordan to serve 180 days in the LaPorte County Jail followed by placement in Community Corrections for 180 days.

[5] In Jordan's appeal, he argues the court's sanction was improper because "compliance with the terms of probation imposed a financial obligation that [he] could not satisfy due to his indigency." Appellant's Br. p. 4. For reasons we fully explain below, we disagree.

Discussion and Decision

[6] "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) (2015). Moreover, "[p]roof of a single violation is sufficient to permit a trial court to revoke probation." *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied.* Upon determining that a probationer has violated a

condition of probation, the court may impose one of several sanctions, including ordering "execution of all or part of the sentence that was suspended at the time of initial sentencing." I.C. § 35-38-2-3(h). When a party challenges the sanction imposed, we review the trial court's decision for an abuse of discretion, which occurs when the decision is "clearly against the logic and effect of the facts and circumstances." *Prewitt*, 878 N.E.2d at 188.

[7] Here, Jordan admitted that he violated the conditions of his probation as alleged. As for his failure to call the drug testing line, he offered in mitigation only that he "couldn't remember," despite his prior agreement to the conditions imposed by the court. Tr. Vol. II, p. 11. His failure to call the drug testing line does not implicate a lack of funds to do so. Thus, his indigency argument in this regard finds no support in the record. And this violation alone—failure to call on more than forty occasions—is enough to support the court's chosen sanction. *See Killebrew*, 165 N.E.3d 582 (single violation warrants revocation).

[8] As for his failure to report for drug testing, Jordan requested the imposition of time served with reporting to regular reporting probation. For the first time at the hearing, he contended that he could walk to the probation department from his home, but that he did not have transportation to Re-Entry Court, which was farther away. On appeal, he claims the court imposed a financial obligation on him by requiring him to travel to Re-Entry Court. He claims, therefore, that the court erred as a matter of law by revoking his probation for his admitted failure to report to the testing site, a failure brought about because the condition imposed a financial obligation on him he could not meet. "Probation may not

be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay. *See* I.C. § 35-38-2-3(g).

[9] Reporting for drug testing does not constitute imposition of a financial obligation, however. Section 35-38-2-3(g) applies to court-ordered fines, fees, child support obligations, or restitution. *See, e.g.*, *Smith v. State*, 963 N.E.2d 1110, 1113-14 (Ind. 2012) (failure to pay child support); *Champlain v. State*, 717 N.E.2d 567, 571 (Ind. 1999) (failure to pay restitution). And Jordan has not cited authority holding that the reporting requirement for drug tests on scheduled days constitutes a financial obligation.

[10] The court provided Jordan with the opportunity to offer evidence in mitigation against revocation. However, as the court stated, " . . . your big problem with it is that you can't get to LaPorte when you need to . . . that's something if you're honest with us about, we can help figure things out." Tr. Vol. II, p. 21. Put differently, Jordan did not reach out first to his probation officer or the court once it became apparent he had transportation issues negatively impacting his ability to comply. Had he done so, the court and the probation department could have helped "figure things out." *Id.* And the court's hypothetical, demonstrating the ends to which people would go if free money was being handed out, emphasized the importance of using that same effort regarding compliance with the conditions of probation. Consequently, we find no error.

Conclusion

[11] In light of the foregoing, we affirm the trial court's judgment.

[12] Affirmed.

Altice, C.J., and May, J., concur.

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