

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew Eversman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 26, 2021

Court of Appeals Case No.
20A-CR-2151

Appeal from the Ripley Superior
Court

The Honorable Jeffrey Sharp,
Judge

Trial Court Cause Nos.
69D01-1806-CM-185
69D01-1807-CM-201

Weissmann, Judge.

[1] Andrew Eversman admitted he violated the terms of his probation in two cases when he drove while intoxicated and without a valid license. In light of that admission and his mental illness, Eversman claims the trial court's decision to send him back to jail for 365 days for the probation violations was unduly harsh. Finding the sanction was generous, rather than severe, we affirm the trial court's judgment.

Facts

[2] Eversman was convicted in 2019 of invasion of privacy and theft arising from separate incidents. For the invasion of privacy, he was sentenced to 365 days imprisonment, with the entire sentence suspended to probation. His theft conviction netted him another 180-day jail sentence, of which 126 days were suspended to probation. While Eversman was on probation in both cases, he operated a motor vehicle while intoxicated and with a suspended license, both misdemeanor offenses for which he eventually was convicted.

[3] Those new offenses prompted Eversman's probation officer to file a petition to revoke Eversman's probation in both the invasion of privacy and theft cases. The officer alleged Eversman had violated the terms of his probation in both cases by committing new offenses. Eversman eventually admitted the probation violation allegations and requested the trial court sentence him to home detention or a brief jail term. The trial court revoked Eversman's probation in the invasion of privacy case and ordered him incarcerated for his

originally suspended 365-day sentence. The trial court discharged Eversman from probation in the theft case without any additional sanction.

Discussion and Decision

- [4] Eversman claims the trial court abused its discretion by imposing a sanction of 365 days in jail for his probation violations. A trial court has discretion to determine the sanction for a probation violation and will be reversed only where the decision is clearly against the logic and effect of the facts and circumstances before the trial court or where the trial court misinterprets the law. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013); *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008).
- [5] Once Eversman admitted the probation violation, the trial court had several sanctions from which to choose. It could have continued Eversman on probation, extended the length of his probation, or ordered him incarcerated for all or part of the sentences that were suspended at his initial sentencings in the invasion of privacy and theft cases. Ind. Code § 35-38-2-3(h)(1)-(3). It also could have imposed a combination of those sanctions. *Prewitt v. State*, 878 N.E.2d 184, 187 (Ind. 2007).
- [6] The trial court chose to revoke Eversman's probation in both the invasion of privacy and theft cases but to impose a sanction of incarceration in only one. The sanction imposed—365 days in jail—was approximately four months less than the maximum available. Eversman claims he nevertheless was entitled to greater leniency because he committed the new offenses when he relapsed while

distressed over the deaths of his father and grandfather. He also asserts a lesser sanction was required because he admitted the probation violations and cares for his disabled wife in a manner he failed to describe. Eversman also notes his mental illness, for which he receives treatment and takes medication.

- [7] The trial court gave little weight to Eversman's admission because a probation violation finding was a "foregone conclusion" in light of Eversman's convictions for the new offenses. Tr. Vol. II, p. 12. Instead, the trial court focused on Eversman's mental illness and criminal history, which, in addition to the invasion of privacy and theft convictions in 2019, consisted of convictions for operating while intoxicated in 2002, public intoxication and battery in 2006, theft in 2011, and domestic battery in 2017. Tr. Vol. II, p. 12; App. Br., p. 10.
- [8] Probation is a matter of grace left to trial court discretion, rather than a right to which a defendant is entitled. *Prewitt*, 878 N.E.2d at 188. The trial court showed relative mercy to Eversman when, in 2019, it placed him on probation rather than in jail, despite his numerous prior contacts with the criminal justice system. Eversman's response to such leniency was to commit more of the alcohol-related crimes that litter his criminal history. While we sympathize with Eversman's recent struggles and understand he has had a difficult life, those unfortunate circumstances do not justify his continuing criminal behavior.
- [9] The trial court again displayed mercy when after revoking Eversman's probation, it required him to serve in jail only one of his two suspended

sentences. In so doing, the trial court acted well within its discretion. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015) (ruling that a single violation of a condition of probation is sufficient to permit trial court to revoke probation).

[10] We affirm the trial court's judgment.

Kirsch, J., and Altice, J., concur.