

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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John D. Akers, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

January 20, 2023

Court of Appeals Case No.  
22A-CR-1781

Appeal from the Vigo County  
Superior Court

The Honorable Sarah K. Mullican,  
Judge

Trial Court Cause Nos.  
84D03-2007-F6-2431  
84D03-1610-F3-2745

**May, Judge.**

[1] John D. Akers, Jr., appeals following the revocation of his probation. Akers presents one issue for our review, which we restate as whether the trial court abused its discretion in revoking his probation and ordering him to serve the remainder of his sentence incarcerated. We affirm.

## Facts and Procedural History

[2] Pursuant to a plea agreement in July 2017, Akers pled guilty but mentally ill to Level 3 felony armed robbery<sup>1</sup> under cause number 84D03-1610-F3-2745 (“F3-2745”). On March 12, 2018, the trial court sentenced Akers to a term of nine years. The trial court ordered Akers to serve the first three years of his sentence on home detention and the remaining six years on probation.

[3] Akers began serving the home detention portion of his sentence at Odyssey House, a drug rehabilitation facility in Shelbyville, Indiana. On April 6, 2018, the State filed a petition to revoke Akers’s home detention placement alleging he failed to abide by the rules of Odyssey House, including leaving the facility without permission and failing to return to the facility on time after receiving permission to leave. The State later moved to dismiss its petition to revoke Akers’s home detention placement once Akers was accepted at an alternative placement, Grace House, in Shelbyville, Indiana.

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<sup>1</sup> Ind. Code § 35-42-5-1.

[4] On December 3, 2018, the State filed a second petition to revoke Akers's home detention placement alleging that on December 2, 2018, Akers removed his GPS tracking device and absconded. The trial court issued a bench warrant, and law enforcement eventually apprehended Akers. On April 11, 2019, Akers admitted violating the terms of his direct placement. The trial court found Akers had completed service of his direct commitment and ordered that he be placed on formal probation. Akers's conditions of probation required that he not violate any laws and not use or possess any controlled substances, except as prescribed by a licensed medical practitioner. The conditions of probation also required Akers to submit to regular drug screening.

[5] On June 25, 2020, the State filed a notice of probation violation. The notice alleged:

A.) On 6/4/2020, you failed to submit to a drug screen as ordered by your probation officer in violation of Rule #8.

B.) On 6/23/2020, you were charged with Count 1: Battery Against a Public Safety Official, a Level 6 felony, Count 2: Resisting Law Enforcement, a Level 6 felony and Count 3: Criminal Mischief, a Class A misdemeanor in violation of Rule #1. Monroe County-53C05-2006-F6-000520.) [sic]

C.) On 6/22/2020 you were delusional and under the influence of drugs in violation of Rule #7.

(Supp. App. Vol. II at 140) (emphases removed). On July 23, 2020, the State amended its notice of probation violation to allege: "On 7/21/2020, you were

charged with Count 1: Battery by Bodily Waste, a Level 6 felony and Count 2: Battery Against a Public Safety Official, a Level 6 felony in violation of Rule #1. (84D03-2007-F6-002431.)” (*Id.* at 155) (emphases removed). On June 9, 2021, the State amended the notice of probation violation again to allege: “On 5/12/2021, you were ordered to Adduction [sic] Solutions for placement. On 6/6/2021 you voluntarily left the program without permission.” (*Id.* at 162) (emphases removed).

[6] On November 3, 2021, Akers and the State entered into a plea agreement. Akers agreed to plead guilty to Level 6 felony battery against a public safety official under cause number 84D03-2007-F6-2431 (“F6-2431”) and to admit the alleged violations of the terms and conditions of his probation in F3-2745. In exchange, the State agreed to dismiss a third criminal case then pending against Akers in Vigo County. On November 8, 2021, the trial court held a hearing in which Akers pled guilty in F6-2431 and admitted violating his conditions of probation in F3-2745. Prior to imposing sentence in F6-2431 and sanction in F3-2745, the trial court allowed Akers time to seek evaluations from several sober living facilities for placement in one of those facilities. Two sober living facilities approved Akers for placement. Akers testified he experienced some success in addressing his substance abuse issues while a resident at Grace House, and Akers asked the trial court to place him at that facility again.

[7] On June 28, 2022, the trial court sentenced Akers to a term of one year in F6-2431. The trial court noted this sentence was “fully served” because of the time Akers spent in pretrial confinement. (App. Vol. II at 184.) The trial court also

ordered Akers to serve the remainder of his suspended sentence in F3-2745 incarcerated in the Indiana Department of Correction.<sup>2</sup>

## Discussion and Decision

[8] “Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his [or her] behavior in lieu of imprisonment.” *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). It “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 has discretion to set the conditions of probation and “to revoke probation if the conditions are violated.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Revocation of probation is a two-step process. *Id.* The court must first determine whether a violation occurred. *Id.* If the trial court finds the defendant violated the conditions of probation, the trial court may continue the probation, extend the term of probation, or “[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).

[9] When a defendant appeals from a trial court’s determination of violation and sanction, we review the court’s decision for an abuse of discretion. *Heaton*, 984 N.E.2d at 616. “An abuse of discretion occurs where the decision is clearly

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<sup>2</sup> While the order from which Akers appeals was issued in both F6-2431 and F3-2745, he limits his challenge on appeal to the imposition of the sanction in F3-2745.

against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law[.]” *Id.* (internal citation omitted). “On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses.” *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008).

[10] Akers contends his probation violations stem from untreated mental illness and attempts to self-medicate. Therefore, he argues, the trial court erred in ordering him to serve the balance of his sentence incarcerated. We cannot find the trial court abused its discretion, however, when alternative placements besides incarceration have not been successful.

[11] While on probation, Akers repeatedly failed to abide by the conditions of his court-ordered residential treatment programs and to obey the law. In fact, the day after the trial court sentenced Akers in F3-2745, he left Odyssey House without permission and failed to return by the established curfew time for all residents. He later removed his GPS tracking device without permission and absconded. Akers also voluntarily left his Addictions Solutions placement without permission.

[12] Between the date of his sentencing in F3-2745 and the trial court’s revocation of his probation, Akers accumulated additional criminal charges in both Monroe County and Vigo County. He was also convicted of Level 6 felony escape in Shelby County during that time period. In addition, Akers failed to comply with the conditions of probation that required him to submit to drug screens

and abstain from illegal substances. Given all these repeated failures, we cannot say the trial court abused its discretion by sanctioning Akers to serve the balance of his suspended sentence in F3-2745 incarcerated. *See Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005) (holding trial court did not abuse its discretion when it ordered the defendant to serve the balance of her suspended sentence incarcerated as a sanction for multiple probation violations, including repeated failures to obey the law), *trans. denied*.

## Conclusion

[13] The trial court did not abuse its discretion by revoking Akers's probation and ordering him to serve the balance of his suspended sentence incarcerated.

Accordingly, we affirm.

[14] Affirmed.

Crone, J., and Weissmann, J., concur.