

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Cara S. Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Brandi Kay Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 21, 2021

Court of Appeals Case No.
21A-CR-809

Appeal from the Shelby Superior
Court

The Honorable Barbara A.
Harcourt, Senior Judge

Trial Court Cause No.
73D02-2004-F6-158

Mathias, Judge.

- [1] The Shelby Superior Court revoked Brandi Kay Smith's probation and ordered her to serve the remainder of her previously suspended sentence in the Indiana

Department of Correction (“DOC”). Smith appeals, arguing that the trial court erred in revoking her probation and imposing the full sentence.

[2] We affirm.

Facts and Procedural History

[3] In April 2020, Smith was arrested and charged with Level 6 felony possession of methamphetamine, Class A misdemeanor possession of paraphernalia, and Class C misdemeanor possession of paraphernalia. A few months later, Smith entered into a plea agreement with the State in which she pleaded guilty to the felony; in exchange, the State dismissed the two misdemeanors. *See App. Vol. II*, pp. 32–36. On December 1, the trial court accepted the plea agreement and sentenced Smith to 537 days, all suspended to probation.

[4] On January 13, 2021, the State filed the first of three petitions to revoke Smith’s probation. That petition alleged that Smith: (1) failed to provide the probation department with an accurate address; and (2) tested positive for methamphetamine on January 8. *Id.* at 41. At the hearing on the petition the following day, the trial court found that Smith violated probation after she admitted to both allegations.

[5] During the hearing, the court also learned that Smith had been caring for a twenty-one-year-old female, A.W.,¹ who has “a severe mental disability” and is

¹ A.W. is Smith’s goddaughter. Tr. p. 73.

“unable to care for herself.” Tr. p. 11. Smith’s probation officer learned about these circumstances earlier in the week and he contacted Adult Protection Services (“APS”). APS employee Jerry Kiefer testified that A.W. “needs to be in supportive living, have somebody watch her around the clock.” *Id.* at 15. Ultimately, the court scheduled a February 11 dispositional hearing on Smith’s violation, continued her on probation, and ordered Smith, as a new condition, “to cooperate with Adult Protective Services.” *Id.* at 17. In the four weeks following this hearing, the State filed two additional petitions to revoke Smith’s probation.

[6] The second petition, filed on January 29, alleged that Smith: (1) failed to comply with APS by keeping it apprised of her and A.W.’s whereabouts; (2) failed to submit to a drug screen on January 27; and (3) failed to submit to a drug screen on January 28. App. Vol. II, p. 45. At the February 8 revocation hearing on this petition, Smith, who was in custody, denied the first two allegations, but admitted to the third. Tr. p. 24. At the dispositional hearing the next day, the trial court found that Smith had violated probation by not submitting to the drug test. The court also learned that Smith had been incarcerated for the previous thirteen days and that A.W. had been placed with legal guardians. In sentencing Smith on this violation, the court found that “26 days is enough for not going to a drug screen credit for 13 plus 13 days served.” *Id.* at 30–31. Doing so reduced Smith’s sentence from 537 days to 511 days. The court continued Smith on probation.

- [7] The third petition, filed on February 18, related to why Smith had been in custody during the previous hearings. Specifically, the petition alleged that Smith, on January 29, possessed methamphetamine and drug paraphernalia. App. Vol. II, p. 52. The court held a hearing on that petition, as well as outstanding matters from the other two petitions, on February 25. Smith admitted to failing to comply with APS, an allegation from the second petition that she had previously denied. Tr. p. 54. And Smith admitted to the allegation in the third petition. *Id.* The trial court then proceeded to disposition. Smith’s probation officer, Kiefer with APS, and Smith each testified. Ultimately, the court revoked Smith’s probation and ordered her to serve the remaining 511 days in the DOC. The court also recommended Smith for the Jail Intervention program while incarcerated.
- [8] Smith now appeals the court’s revocation and sentencing decision.

Discussion and Decision

- [9] “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). Indeed, the court determines the conditions of probation and may revoke probation if those conditions are violated. *Id.*; *see also* Ind. Code § 35-38-2-3(a). After determining a defendant has violated probation, the court has several options in deciding how to proceed, including revoking probation and ordering the execution of the defendant’s previously suspended sentence. *See* I.C. §35-38-

2-3(h). We review a court’s sentencing decision on probation violations for an abuse of discretion. *Prewitt*, 878 N.E.2d at 188.

[10] Notably, Smith does not argue that the trial court abused its discretion in ordering execution of her previously suspended sentence. She instead contends that “revocation and imposition of the full remaining sentence was not warranted.” Appellant’s Br. at 9. Regardless of how the issue is framed, the record reveals that the trial court did not err in revoking Smith’s probation and imposing her previously suspended sentence.

[11] The State filed three petitions to revoke Smith’s probation, and she admitted to five violations: (1) she did not inform the probation department of her current address; (2) she used methamphetamine; (3) she did not comply with APS; (4) she did not submit to a required drug screen; and (5) she was arrested for possession of methamphetamine and drug paraphernalia. Each of these violations occurred within a month. And Smith committed the latter three violations after the court showed leniency by continuing Smith’s probationary term despite the first two violations. *See* Tr. pp. 17–18. We again emphasize that trial courts, after finding a single probation violation, have the discretion to revoke probation and “[o]rder execution of all” of the defendant’s previously suspended sentence. I.C. § 35-38-2-3(h); *see, e.g., Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. We cannot say that the court’s decision to choose that option here was “not warranted.”

[12] At the same time, we acknowledge Smith's remorse at the final hearing as well as her stated desire to seek counseling. *See* Tr. pp. 76–77. And we hope that Smith gets the help she needs through the Jail Intervention Program or upon release. However, these circumstances do not change the fact that the trial court acted within its discretion when it ordered Smith to serve her previously suspended sentence.

Conclusion

[13] The trial court did not abuse its discretion in revoking Smith's probation and ordering her to execute the previously suspended sentence.

[14] Affirmed.

Tavitas, J., and Weissmann, J., concur.