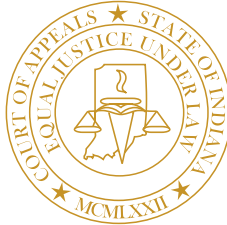


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Jason Edward Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 13, 2024

Court of Appeals Case No.
24A-CR-634

Appeal from the
Vanderburgh Circuit Court

The Honorable
David D. Kiely, Judge

Trial Court Cause No.
82C01-2211-F5-6783

Memorandum Decision by Senior Judge Baker
Judges Bradford and Kenworthy concur.

Baker, Senior Judge.

Statement of the Case

- [1] Jason Edward Taylor appeals from the trial court’s order revoking the entirety of his three-year suspended sentence, contending the trial court abused its discretion. Finding no error, we affirm.

Facts and Procedural History

- [2] The State charged Taylor with Level 5 felony operating a motor vehicle after forfeiture of license for life and filed an habitual offender enhancement. Taylor agreed to plead guilty to the felony charge in exchange for three years suspended to the Drug Abuse Probation Services (DAPS) Program and for the dismissal of the habitual offender enhancement. On August 31, 2023, the trial court accepted and imposed the terms of the plea agreement.
- [3] On September 14, 2023, Taylor signed the acknowledgement of the conditions of probation, which included his agreement “Not to unlawfully use . . . any drug identified as a controlled substance . . . [or] consume any substances which may cause a person to feel under the influence or intentionally alter your mood” Appellant’s App. Conf. Vol. II, p. 55. On September 28, 2023, Taylor

tested positive for methamphetamine.¹ Taylor admitted that he used methamphetamine on September 14, 2023, the day he signed the acknowledgement of the conditions of his probation.

- [4] The State filed a notice of probation violation on September 29, 2023, alleging Taylor’s methamphetamine use. Taylor admitted to the violation. At sentencing, the court noted Taylor’s criminal history and prior unsuccessful opportunities for rehabilitation before revoking Taylor’s three-year sentence to the DAPS program and ordering it to be served in the Department of Correction (DOC).

Discussion and Decision

- [5] Taylor appeals, arguing that the court abused its discretion by revoking the entirety of his suspended sentence because “it should not be considered particularly aggravating for an addict to have a relapse when entering or starting a drug treatment program.” Appellant’s Br. p. 12. He further claims that he is being punished for a “character flaw” due to his substance abuse, when it should be treated as a “disease.” *Id.* at 13.
- [6] ““Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.”” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). “It is within

¹ Methamphetamine is a Schedule II controlled substance. See Ind. Code §35-48-2-6(d)(2)(2023).

the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated.” *Heaton*, 984 N.E.2d at 616. “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Id.* “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, *id.*, or when the trial court misinterprets the law, *see State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008) (citing *Axsom v. Axsom*, 565 N.E.2d 1097, 1099 (Ind. Ct. App. 1991) (“An abuse of discretion may also be found when the trial court misinterprets the law or disregards factors listed in the controlling statute.”)).” *Id.*

[7] “Probation revocation is a two-step process.” *Heaton*, 984 N.E.2d at 616. “First, the trial court must make a factual determination that a violation of a condition of probation actually occurred.” *Id.* “Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation.” *Id.* We address only the second step here because the violation itself is not being challenged.

[8] Taylor argues that the trial court abused its discretion by treating his violation as a character flaw instead of a relapse by a drug addict “shortly after beginning a drug treatment program.” Appellant’s Br. p. 9. He directs us to our decision in *Kovats v. State*, 982 N.E.2d 409, 417 (Ind. Ct. App. 2013), a case where we found that most of the defendant’s “offenses are related to her obvious addiction to narcotics . . . [which] does place her behavior in perspective.”

Taylor asserts that we should likewise place his behavior in perspective and reduce the sentence imposed for his probation violation.

[9] The *Kovats* decision is distinguishable from the present case in a couple of significant ways. First, *Kovats* involved an Appellate Rule 7(B) challenge to the *maximum sentence* imposed. 982 N.E.2d at 416. Here, we are looking at a sanction for a violation where the sentence length was already agreed upon in the plea agreement. See Appellant’s App. Conf. Vol. II, p. 20 (“Count 1: The Court shall sentence [Taylor] to the Indiana Department of Correction for a fixed-term of three [3] years and the Court shall order said sentence to be suspended to the [DAPS] Program.”). And Taylor was apprised of the consequences of a violation when entering into the plea agreement, namely, the potential imposition of the entirety of his suspended sentence to be executed in the DOC.

[10] Indeed, “[i]f the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may . . . (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code §35-38-2-3(h) (2015). Here, the trial court examined Taylor’s extensive criminal history, which was indicative of his refusal to conform his behavior to the law despite repeated contacts with multiple aspects and services which were made available to him. The court concluded by explaining to Taylor, “you need to stop committing felonies.” Tr. Vol. II, p. 16.

[11] Taylor’s criminal history includes over thirteen prior felony convictions, including operating a motor vehicle after lifetime forfeiture of driving privileges (2005, 2007, 2012), theft (2009, 2015, 2017 and 2018), failure to return to lawful detention (2006, 2007), operating as a habitual traffic offender (1998, 2000), auto theft (1995), and vehicle theft (1995). He was convicted of theft in Ohio in 1992. And he was arrested in South Carolina for felony burglary, misdemeanor malicious injury to property, failure to comply with police direction, and was convicted of a misdemeanor for hindering officers. Immediately prior to the present case, Taylor was convicted of Level 5 felony possession of methamphetamine and an habitual offender enhancement (2019), for which he received an aggregate sentence of six years, during which he absconded from work release, resulting in new felony criminal charges.

[12] As for Taylor’s lifelong issues with addiction, he began using THC weekly when he was eighteen years old, began using methamphetamine daily when he was twenty-five, and he began drinking alcohol when he was twelve years old. He has received treatment through NOW Counseling (2021) and Stepping Stone Inpatient Services (2005). While serving his sentence for his 2019 convictions, Taylor spent eighteen months in the Forensic Diversion Program² before being transferred to the DAPS Program. Taylor continued to use

² A “forensic diversion program” is a program “designed to provide an adult: (1) who has an intellectual disability, an autism spectrum disorder, a mental illness, an addictive disorder, or a combination of those conditions; and (2) who has been charged with a crime that is not a violent offense, an opportunity to receive community treatment addressing mental health and addiction and other services instead of or in addition to incarceration. Ind. Code §11-12-3.7-4 (2015).

controlled substances which led to the court unsatisfactorily closing the case. At the time of his sentencing in the current case, Taylor was ineligible for direct placement at the Vanderburgh County Therapeutic Work Release Facility, because of his prior conviction for failure to return to lawful detention.

[13] In sum, to the extent Taylor leans on his obvious issues with controlled substances, he has been offered many services but has failed to make use of those opportunities. The trial court's focus was on Taylor's total disregard for the court's authority. Beyond his extensive criminal history, which shows his failure to lead a law-abiding life, Taylor consumed methamphetamine the day he signed the terms and conditions of his probation agreeing to refrain from doing so and after negotiating a plea agreement which placed him in a program that would have been beneficial to him. We find no abuse of discretion here.

Conclusion

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

[15] Affirmed.

Bradford, J., and Kenworthy, J., concur.

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