

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel Elifritz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 10, 2022

Court of Appeals Case No.
22A-CR-543

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause No.
03D01-1712-F6-6678

Bradford, Chief Judge.

Case Summary

- [1] On May 5, 2021, Daniel Elifritz was sentenced to a two-year term after he was convicted of possessing methamphetamine, marijuana, and paraphernalia. Elifritz was given credit for one day served and the trial court ordered that the remainder of the sentence be served on probation. In the months that followed, Elifritz violated the terms of his probation on numerous occasions. On February 9, 2022, after finding that Elifritz had violated the terms of his probation, the trial court revoked Elifritz's probation and ordered that he serve the balance of his two-year sentence in the Bartholomew County Jail. Elifritz contends that the trial court abused its discretion by ordering that he execute the remainder of his two-year sentence. We affirm.

Facts and Procedural History

- [2] On November 28, 2017, a Columbus police officer initiated a traffic stop after he observed Elifritz driving a pick-up truck with a trailer that did not have a license plate. During the traffic stop, Elifritz was found to be in possession of methamphetamine, marijuana, and drug paraphernalia. On December 7, 2017, Elifritz was charged with Level 6 felony possession of methamphetamine, Class

B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. He was convicted of all three offenses on April 7, 2021.¹

- [3] On May 5, 2021, the trial court sentenced Elifritz to an aggregate two-year sentence, all but one day of which was suspended to probation. The terms of Elifritz’s probation established that he was to refrain from criminal behavior, report any interaction with police to his probation officer, maintain suitable housing and employment, refrain from possessing or using alcohol or drugs, submit to drug testing, and participate in Community Corrections for the “entire term of probation.” Appellant’s App. Vol. I p. 101.
- [4] The State filed a petition to revoke Elifritz’s probation on July 2, 2021. In this petition, the State alleged that Elifritz had violated the terms of his probation by refusing to obtain suitable employment; failing to obtain “a suitable residence capable of supporting Community Corrections electronic monitoring equipment;” stating that he “would not participate in the Bartholomew County Work Release program,” indicating that “he wanted to be placed into the Bartholomew County Jail instead;” and testing positive for methamphetamine on May 25, and June 23, 2021. Appellant’s App. Vol. II pp. 114–15.
- [5] The State filed an amended petition to revoke Elifritz’s probation on November 4, 2021. In this amended petition, the State additionally alleged that Elifritz

¹ Elifritz appealed his convictions, which were affirmed by decision of this court on January 26, 2022. *See Elifritz v. State*, 2022 WL 222303 (Ind. Ct. App. January 26, 2022).

had violated the terms of his probation by testing positive for methamphetamine on June 24, 2021, failing to report police contact to his probation officer after the vehicle he was driving was stopped by police and he was found to be in possession of an open container of alcohol, and failing to report for scheduled appointments with his probation officer. The State filed a second amended petition to revoke Elifritz's probation on November 24, 2021. In this amended petition, the State additionally alleged that Elifritz had violated the terms of his probation by "failing [to] contact his probation officer or to report to Community Corrections following his release from the Bartholomew County Jail" on November 17, 2021. Appellant's App. Vol. II pp. 156–57.

- [6] The trial court held a hearing on the revocation petitions on February 9, 2022. At the conclusion of the hearing, the trial court found that Elifritz had violated the terms of his probation, revoked Elifritz's suspended sentence, and ordered him to serve the balance of his sentence in the Bartholomew County Jail.

Discussion and Decision

- [7] Elifritz contends that the trial court abused its discretion in ordering that he serve the remainder of his previously-suspended, two-year sentence in the Bartholomew County Jail.

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Once a trial court has exercised its grace by ordering probation rather than

incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) (internal citations omitted).

If 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 impose one (1) or more of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
- (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).

[8] Elifritz argues that he “was in need of substance abuse treatment, not incarceration and the trial court’s revocation of his entire sentence based on technical violations was an abuse of discretion.” Appellant’s Br. p. 10. However, even if some of Elifritz’s violations could potentially be considered “technical” in nature, Elifritz was found to have violated the terms of his probation by testing positive for methamphetamine on three different occasions.

As we have previously concluded, “positive drug screens are hardly mere ‘technical’ violations of probation.” *Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019). Furthermore, we have previously concluded that when, as here, an individual was aware of his substance-abuse problem but had not taken any steps to treat it, the trial court does not abuse its discretion by rejecting the substance-abuse issue as a mitigating circumstance. *Bryant v. State*, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), *trans. denied*.

[9] In addition to his positive drug screens, Elifritz’s refusal to obtain suitable employment and housing, attend scheduled meetings with his probation officer, and participate in Community Corrections programming indicates that he was not a good candidate for probation. Given the nature and number of violations committed by Elifritz, the trial court was well within its discretion to sanction him by ordering that he serve the remainder of his previously-suspended, two-year sentence.

[10] The judgment of the trial court is affirmed.

Bailey, J., and Najam, Sr.J., concur.