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IN THE  
COURT OF APPEALS OF INDIANA

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Luis Angel Benitez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 23, 2022

Court of Appeals Case No.  
22A-CR-1044

Appeal from the Dubois Superior  
Court

The Honorable Mark R.  
McConnell, Judge

Trial Court Cause No.  
19D01-2008-F6-671

**Bailey, Judge.**

## Case Summary

- [1] Luis Angel Benitez appeals the trial court’s termination of his participation in a drug court program and order that he serve his previously suspended sentence in the Department of Correction (“DOC”). We affirm.

## Issues

- [2] Benitez raises two issues for our review, which we revise and restate as follows:
1. Whether the trial court abused its discretion when it terminated his participation in the drug court program.
  2. Whether Indiana Appellate Rule 7(B) is available as a possible remedy to challenge the court’s imposition of the previously suspended sentence following his termination from drug court.

## Facts and Procedural History

- [3] On August 2, 2020, Benitez was serving a sentence on home detention following a conviction for “[u]nlawful possession” in Cause Number 19D01-1902-F3-173 (“F3-173”). Tr. at 23. That day, officers conducted of search of Benitez’s home and found methamphetamine in his bedroom. As a result, the State charged Benitez with possession of methamphetamine, as a Level 6 felony.<sup>1</sup> Thereafter, Benitez pleaded guilty as charged. At a sentencing hearing,

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<sup>1</sup> Ind. Code § 35-48-4-6.1(a) (2022)

the court revoked Benitez's placement on home detention in F3-173 and ordered that he serve 410 days in the DOC. The court also sentenced Benitez to 547 days for the instant offense, to run consecutive to his sentence in F3-173. However, the court stayed the 547-day sentence on the condition that he successfully complete a drug court program.

[4] Benitez completed his sentence in F3-173 and began serving his sentence for the instant offense on September 23, 2021. However, Benitez "immediately" had a violation "for failure to start drug court[.]" Tr. at 24. Consequently, he received a sanction of thirty-two hours of community services. Benitez then committed three additional violations when he failed to check in with the program on September 28, September 29, and October 2. On September 30, Benitez had a "curfew violation." *Id.* at 27. In addition, on one occasion, Benitez was "[a]bout 35 minutes or so" late to drug court. *Id.* at 29. And Benitez had "a violation for [an] inappropriate relationship." *Id.* at 30. Based on those violations, on October 20, the State filed a petition to terminate Benitez's participation in the drug court program.

[5] At a fact-finding hearing on the State's petition, Benitez admitted that he had violated the terms of the drug court program. The court then held a dispositional hearing. During that hearing, Benitez acknowledged that he had committed seven violations in a "[s]hort period of time" but asserted that he had a "plausible explanation" for each violation. *Id.* at 31. Specifically, he testified that he failed to timely start the drug court program because he was "never able to get ahold of" his parole officer. *Id.* at 24. As for the failures to

check in, Benitez testified that he was at all of the meetings but that he had forgotten to sign the check-in form on September 28 and 29 and that he had signed the wrong form on October 2. He also testified that he had the curfew violation and that he was late to drug court because he was cleaning his home that had previously been sitting vacant for several months. And as to the inappropriate relationship, he testified that he “bumped into” a man he had met in the past and that the two discussed water heaters. *Id.* at 30.

[6] At the conclusion of the hearing, the court acknowledged that Benitez had offered “explanations or excuses” for his violations. *Id.* at 38. But the court then stated: “I tend to think that if it was just one violation, that it might make sense, or the Court might buy it, but you were in drug court for a very short period of time.” *Id.* at 38. The court further stated that the multiple violations “makes a statement that you were just not making much of an effort in drug court.” *Id.* And the court stated that Benitez had “no regard” for the drug court rules. *Id.* Accordingly, the court terminated Benitez’s participation in the drug court program and ordered him to serve 305 days in the Department of Correction. This appeal ensued.

## Discussion and Decision

### *Issue One: Termination from Drug Court*

[7] Benitez first asserts that the trial court abused its discretion when it terminated his participation in drug court. Drug court is a forensic diversion program akin to community corrections or probation, and, on appeal, we will review the

termination of placement in drug court as we do a revocation of placement in community corrections or a revocation of probation. *Withers v. State*, 15 N.E.3d 660, 663 (Ind. Ct. App. 2014). “In appeals from trial court probation violation determinations and sanctions, we review for [an] abuse of discretion.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law. *Id.*

[8] “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). It is within the discretion of the trial court to determine the conditions of probation and to revoke probation if the conditions are violated. *Castillo v. State*, 67 N.E.3d 661, 663-64 (Ind. Ct. App. 2017), *trans. denied*. Probation revocation is a two-step process. *Hampton v. State*, 71 N.E.3d 1165, 1171 (Ind. Ct. App. 2017), *trans. denied*. 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.*

[9] If a problem solving court<sup>2</sup> finds that an individual participating in a program has violated a condition of the program, the problem solving court may “continue the individual’s participation in the program” or “terminate the

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<sup>2</sup> A drug court is a problem solving court. I.C. § 33-23-16-11.

individual's participation in the problem solving court program." Ind. Code § 33-23-16-14.5(e). On appeal, Benitez does not dispute that he committed seven violations of the drug court rules. However, he nonetheless asserts that the court abused its discretion when it terminated him from the drug court program because he provided "explanations for the violations." Appellant's Br. at 9. And he asserts that the court "did not consider" any of his explanations. *Id.*

[10] But contrary to Benitez's assertions, it is clear that the court considered his testimony. Indeed, at the dispositional hearing, the court recognized that Benitez had given "explanations or excuses" for the violations. Tr. at 38. The court then stated that, had there been "just one violation, . . . the court might buy it[.]" *Id.* But the court noted that Benitez had committed several violations in a short time, which demonstrated to the court that Benitez was "not making much of an effort[.]" *Id.*

[11] In other words, the court considered Benitez's purported justifications for the violations but did not give them any weight. Based on the evidence presented at the hearing, which included Benitez's own admission that he committed seven violations, the court was well within its discretion to terminate his participation in the drug court program.

### ***Issue Two: Appellate Rule 7(B)***

[12] Benitez next asserts that the court's imposition of the previously suspended 305-day sentence following his termination from the drug court program was inappropriate in light of the nature of the offense and his character and, thus,

warrants appellate review and revision under Indiana Appellate Rule 7(B). As our Supreme Court has stated:

Rule 7(B) authorizes appellate review and revision of “a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The Rule permits an appellate determination of the appropriateness of a criminal sentence and implements the permissive jurisdiction granted in Article 7, Section 4 of the Indiana Constitution: “The Supreme Court shall have, in all appeals of criminal cases, the power . . . to review and revise the sentence imposed.”

*Jones v. State*, 885 N.E.2d 1286, 1289-90 (Ind. 2008).

[13] On appeal, Benitez contends that the nature of the violations “were understandable and forgivable” based on his explanations. Appellant’s Br. at 9. And he contends that the imposition of his previously suspended sentence was inappropriate in light of his character because he had a job; had “stayed sober, passing all of his drug screens”; and “was willing to participate in classes.” *Id.* at 11. However, Benitez has not demonstrated that Indiana Appellate Rule 7(B) is available as a possible remedy at this stage of the proceedings.

[14] Rather, our Supreme Court has previously addressed the availability of Appellate Rule 7(B) to review an order that a defendant serve a previously suspended sentence following a probation revocation. The Court held that

the appellate evaluation of whether a trial court’s sanctions are “inappropriate in light of the nature of the offense and the

character of the offender” is not the correct standard to apply when reviewing a trial court’s actions in a post-sentence probation violation proceeding. *Prewitt v. State*, 878 N.E.2d 184, 187-88 (Ind. 2007). A trial court’s action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. The review and revise remedy of App. R. 7(B) is not available.

*Jones*, 885 N.E.2d at 1290.

[15] As discussed above, drug court is a program akin to probation. *See Withers*, 15 N.E.3d at 663. Because Appellate Rule 7(B) review is not available in post-sentence probation violation proceedings, we hold that it is similarly not available in proceedings following the termination of a defendant’s participation in a drug court program.<sup>3</sup>

## Conclusion

[16] The trial court did not abuse its discretion when it terminated Benitez’s participation in the drug court program. And Appellate Rule 7(B) review is not an available avenue to challenge the appropriateness of the order that he serve his previously suspended sentence following his termination from the drug court program. We therefore affirm the trial court’s order.

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<sup>3</sup> However, “probation violation sanctions are subject to appellate review for abuse of discretion.” *Jones*, 885 N.E.2d at 1290. Apart from Benitez’s argument that the court abused its discretion when it terminated his participation in the drug court program, Benitez has not made any argument that the court abused its discretion when it ordered that he serve his previously suspended sentence.



[17] **Affirmed.**

Riley, J., and Vaidik, J., concur.