

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

Bonnie Hoff,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 2, 2024

Court of Appeals Case No.
23A-CR-2278

Appeal from the Noble Circuit Court
The Honorable Michael J. Kramer, Judge

Trial Court Cause No.
57C01-1807-F5-46

Memorandum Decision by Judge Weissmann
Judges Mathias and Taviton concur.

Weissmann, Judge.

- [1] While on probation for intimidation and operating a vehicle while intoxicated, Bonnie Hoff failed both to complete required mental health services and to report to her probation officer two instances of law enforcement contact. The trial court concluded that Hoff violated the terms of her probation and, as a sanction, ordered her to serve two and a half years of her previously suspended sentence in the Indiana Department of Correction (DOC). Hoff appeals this sanction as too severe. We find no abuse of discretion and affirm.

Facts

- [2] In 2018, Hoff pleaded guilty to intimidation with a deadly weapon, a Level 5 felony, and operating a vehicle while intoxicated in a manner that endangers a person, a Class A misdemeanor. Pursuant to Hoff's plea agreement with the State, the trial court sentenced her to four years in the DOC, with one year executed and three years suspended to probation.
- [3] Hoff began serving the probation portion of her sentence on April 22, 2019. The conditions of Hoff's probation required, among other things, that she obey all laws, report to the Noble County Probation Department as directed, report to her probation officer any instances of law enforcement contact, complete a mental health assessment, and follow through with any recommended mental health services.

[4] In May 2022, the probation department filed a notice of probation violation with the following allegations:

- On April 29, 2022, Hoff committed Class A misdemeanor theft; and
- On May 2, 2022, Hoff failed to report to the probation department as directed.

The notice also alleged that Hoff failed both to complete recommended mental health services and to report to her probation officer instances of law enforcement contact on February 14 and April 10, 2022.

[5] After a hearing, the trial court found that Hoff violated the terms of her probation as alleged. The court therefore revoked Hoff's probation and ordered her to serve all three years of her previously suspended sentence in the DOC. In sanctioning Hoff, the court considered the misdemeanor theft to be the "most serious" violation. Tr. Vol. II, p. 20. But the court was also "concern[ed]" by Hoff's failure to complete recommended mental health services. *Id.* Additionally, the court observed that Hoff has a "lengthy" criminal history. *Id.*

[6] Hoff directly appealed her sanction, arguing that the trial court erred in considering as probation violations Hoff's April 29 theft and May 2 failure to report because both acts occurred after her probationary period ended on April 22. Another panel of this court agreed and remanded with instructions for the trial court to issue a new sanctioning order. *Hoff v. State*, No. 22A-CR-2692 (Ind. Ct. App. June 8, 2023) (mem.).

[7] On remand, the trial court again revoked Hoff's probation but ordered her to serve only two and half years of her previously suspended sentence in the DOC. This time, the court's "greatest" concern was Hoff's failure to complete recommended mental health services. Tr. Vol. II, p. 27. The court also observed that Hoff failed to report two contacts with law enforcement.

Discussion and Decision

- [8] In this appeal, Hoff argues that the trial court's sanction is too severe. "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). Accordingly, we review a trial court's decision to revoke probation for an 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.*
- [9] Hoff claims the trial court abused its discretion by ordering her to serve two and a half years of her previously suspended sentence despite not being able to consider what the court once believed was her "most serious" probation violation. Tr. Vol. II, p. 20. By Hoff's calculation, "a sanction of only six months less [than the previously ordered three years] is excessive" given the "relatively minor" nature of the remaining violations. Appellant's Br., p. 9. But this math is based on facts and circumstances not before the court on remand.
- [10] Hoff violated the terms of her probation by failing to complete recommended mental health services and by twice failing to report to her probation officer instances of law enforcement contact. Hoff also has a lengthy criminal history,

including probation revocations in three prior cases. Where a probation violation has been established, Indiana Code § 35-38-2-3(h)(3) allows the trial court to “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Considering this is the fourth case in which Hoff’s probation has been revoked, the trial court did not abuse its discretion in ordering her to serve only two and half years of her previously suspended three-year sentence as a sanction for Hoff’s three probation violations.

[11] Affirmed.

Mathias, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana