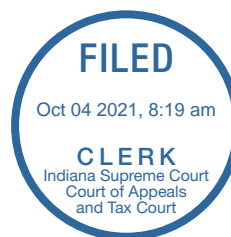


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Mark Anthony Fuller,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

October 4, 2021
Court of Appeals Case No.
21A-CR-597
Appeal from the Dearborn
Superior Court
The Honorable Jonathan N.
Cleary, Judge.
Trial Court Cause No.
15D01-2004-F6-133

Robb, Judge.

Case Summary and Issue

- [1] Mark Fuller appeals the trial court's order that he execute a portion of his previously suspended sentence and that his probation be extended as a result of a probation violation. He raises one issue for our review, which we restate as whether the trial court abused its discretion in revoking his probation by ordering him to serve 180 days of his previously suspended sentence and by extending his probation by 180 days. Concluding the trial court did not abuse its discretion in imposing these sanctions, we affirm.

Facts and Procedural History

- [2] On August 11, 2020, Fuller pleaded guilty to possession of methamphetamine, a Level 6 felony. He was sentenced to 910 days with 293 days suspended to probation. The terms of his probation required that Fuller not consume any alcohol, illegal drugs, synthetic forms of illegal drugs, or controlled substances without a valid prescription as well as submit to drug and alcohol testing. He was released to probation on February 9, 2021. On February 13, 2021, Fuller failed to report for a drug screen and subsequently, on February 25, 2021, submitted a urine sample that tested positive for fentanyl. The State filed a petition to revoke Fuller's probation based on these alleged violations of his probation.
- [3] At the probation violation hearing, Fuller admitted to the violations. He testified that he suffered a drug relapse and overdosed on fentanyl while on

probation. He further testified that Narcan had to be administered to counteract the effects of the overdose. When asked how long he had been using opioids, he indicated that he had been using since 2005. Fuller expressed remorse and articulated that he made a mistake and was embarrassed. The State recommended that the trial court revoke a portion of Fuller's probation by ordering him to serve 180 days of his previously suspended sentence and extending his probation by an additional 180 days. The State emphasized that Fuller has an extensive criminal history, including drug related offenses, dating back to 1995 or 1996.

[4] The trial court accepted the State's recommendation, revoked a portion of Fuller's probation by ordering that he serve 180 days of his suspended sentence, and extended his probation by an additional 180 days. Fuller now appeals.

Discussion and Decision

I. Standard of Review

[5] Probation is not a right. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Rather, probation is a matter of grace left to the trial court's discretion. *Id.* Once a trial court orders probation, the judge is given considerable leeway in deciding how to proceed and may revoke probation if violations occur. *Id.* Accordingly, a trial court's decision imposing sanctions for probation violations is reviewed for an abuse of discretion. *Holsapple v. State*, 148 N.E.3d 1035, 1039 (Ind. Ct. App. 2020). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* On

appeal, we consider only the evidence most favorable to the judgment without reweighing the evidence or judging the credibility of witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

II. Sanction for Violations

- [6] Fuller argues that the trial court abused its discretion by ordering that he serve 180 days of his previously suspended sentence and extending his probation by 180 days. Revocation of probation is a two-step process. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. The first step requires that the trial court make a factual determination as to whether the probationer violated the terms of his probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Although the defendant is generally entitled to certain due process protections in this step, when the defendant admits to the violation, those safeguards are unnecessary, and the trial court can proceed to the second step. *Id.*
- [7] The second step requires that the trial court determine whether the violation warrants revocation. *Id.* Proof of a single violation is sufficient to permit a trial court to revoke probation. *Killebrew*, 165 N.E.3d at 582. When the trial court determines revocation is appropriate, Indiana Code section 35-38-2-3(h) provides that the trial court may impose one or more of several sanctions, including the execution of all or part of the original suspended sentence and extension of the probationary period.

[8] The terms of Fuller’s probation required that he submit to drug and alcohol testing and refrain from consuming any alcohol, illegal drugs, synthetic forms of illegal drugs, or controlled substances without a valid prescription. Fuller admitted that he violated these terms by failing to report for a scheduled drug test and submitting a urine sample that tested positive for fentanyl. Although Fuller admitted to his violations, he argues that his timely admission and his expression of remorse combined with the nature of both the underlying offense and his probation violations render the partial execution of his suspended sentence improper. Although we appreciate his admission, both his underlying offense—possession of methamphetamine—and his violations—failure to report for testing and a positive test for fentanyl—are drug related. Further, his positive test for fentanyl was the direct result of a drug relapse and an overdose that required the use of Narcan to reverse the effects of the overdose. We note the trial court found this to be evidence of a “serious, serious, serious drug problem.” Transcript of Evidence, Volume 2 at 9. The trial court expressed the hope that by executing a portion of his sentence, Fuller would give his body a break and get his drug problem under control. *See id.* at 8. Accordingly, we cannot say the trial court’s decision to revoke Fuller’s probation and order him to execute 180 days of his suspended sentence amounts to an abuse of discretion.

[9] Additionally, Fuller argues that the extension of his probation by an additional 180 days also amounts to an abuse of discretion by the trial court. Here, Fuller failed to adhere to the terms of his original probation. In fact, at the time of his

first violation he was only four days into his probationary period. As a result, the trial court, pursuant to the sanctions permitted under Indiana Code section 35-38-2-3(h), extended his probation by 180 days. We cannot say that such an extension was an abuse of discretion when Fuller violated the terms of his probation within four days of his release. Again, we emphasize that the trial court imposed this sanction in the hope that Fuller would have a chance to kick his drug habit and recover. *See* Tr., Vol. 2 at 8. Accordingly, the trial court did not abuse its discretion by extending Fuller's probation.

[10] In summary, Fuller violated the terms of his probation. His underlying offense was drug related as were his subsequent probation violations. Additionally, Fuller committed his multiple drug related violations within days of being released to probation. Considering the evidence most favorable to the judgment, we cannot say that the trial court abused its discretion in either ordering a partial execution of his suspended sentence or extending his probation.

Conclusion

[11] The trial court did not abuse its discretion in ordering a partial execution of Fuller's suspended sentence or extending his probation. The judgment of the trial court is affirmed.

[12] Affirmed.

Bradford, C.J., Altice, J., concur.