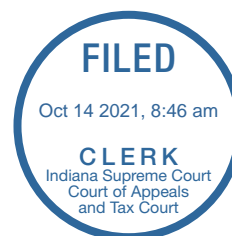


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Kay A. Beehler
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Evan J. Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 14, 2021

Court of Appeals Case No.
21A-CR-733

Appeal from the Vermillion Circuit
Court

The Honorable Robert M. Hall,
Special Judge

Trial Court Cause No.
83C01-1803-F6-31

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Evan Jones (Jones), appeals the trial court's Order, revoking his probation and imposing the balance of his previously-suspended sentence.

[2] We affirm.

ISSUE

[3] Jones presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by revoking the balance of his previously-suspended sentence.

FACTS AND PROCEDURAL HISTORY

[4] On November 29, 2018, Jones pleaded guilty to possession of methamphetamine, and driving while suspended in Cause Number 83C01-1803-F6-000031 (F6-31). Following the terms of the plea agreement, the trial court sentenced Jones to consecutive terms of one and one-half years for the possession offense and one year for driving while suspended. All of Jones' sentence was suspended to probation.

[5] On December 28, 2018, the State filed a petition to revoke Jones' probation, alleging that he had committed the new offenses of intimidation and conversion in Cause Number 83C01-1812-F5-30 (F5-30). While the petition for revocation of probation was pending, Jones was additionally charged with failure to return to lawful detention in Cause Number 83C01-1905-F6-83 (F6-83).

[6] On June 14, 2019, Jones entered into a plea agreement in which he admitted to the intimidation offense, and the State agreed to dismiss the conversion offense in F5-30. Jones additionally admitted to failing to return to lawful detention in F6-83 and to violating the terms of his probation in F6-31. The trial court later accepted Jones' plea. Notwithstanding the fact that Jones had admitted to violating the terms of his probation in F6-31, the trial court ordered Jones to return to probation. Then, pursuant to the plea agreement, the trial court ordered Jones to serve a suspended sentence of one year in F5-30 and a suspended sentence of two and one-half years in F6-83, for an aggregate sentence of two and one-half years of probation.

[7] On January 27, 2021, the State filed a second petition to revoke Jones' probation in F6-31, alleging that Jones had committed a new offense, Class B misdemeanor battery in Cause Number 61C01-2101-CM-24 (CM-24). On March 24, 2021, the trial court conducted another revocation hearing. Following that hearing, on April 30, 2021, the trial court ordered Jones to serve the balance of his probation in F6-31, 852 days, in the Department of Correction.

[8] Jones now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[9] Jones appeals the trial court's order revoking his probation in F6-31 and the imposition of the balance of his previously-suspended sentence.

[10] “Probation is a matter of grace left to the trial court’s 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 probation conditions and to revoke probation if these conditions are violated. *Id.* We review the appeal from a trial court’s probation determination and sanction for an abuse of discretion. *See id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). A probation hearing is civil in nature, and the State need only prove the alleged violation by a preponderance of the evidence. *Id.*

[11] Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition has actually occurred. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* However, where, as here, a probationer admits to the violations, the trial court can proceed immediately to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* In determining whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *See id.* Once a violation has been found and revocation of probation is warranted, the trial court may impose one 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 year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. *See* Ind. Code § 35-38-2-3(h).

[12] Here, the trial court decided to revoke Jones' probation in F6-31 based on his admission that he had committed the battery offense in CM-24 during his probationary term. The evidence in the record supports that finding, and the trial court did not abuse its discretion by revoking Jones' probation on that basis. *See Treece v. State*, 10 N.E.3d 52, 60 (Ind. Ct. App. 2014) (holding that if a person commits an additional crime, the trial court may revoke the probation), *trans. denied*.

[13] Jones, however, argues that the trial court abused its discretion by not considering the circumstances leading up to the battery offense, thereby mitigating his violation. The first is that his girlfriend induced or facilitated the battery offense and that he acted under strong provocation. On appeal, Jones claims that the battery occurred when he forcefully grabbed his phone from his girlfriend to end an argument. Contrary to his argument, the record does not show that Jones acted under strong provocation when he committed battery against his girlfriend, particularly when he admitted at the revocation hearing that the argument was both the parties' fault. Jones next argues that the probation revocation must be set aside because the trial court did not consider the fact that additional incarceration will lead to hardship to his daughter, mother, and grandmother. At the revocation hearing, Jones did not put forth any special circumstances, such as financial or medical support that he gives to

his family, thereby showing that his incarceration would cause undue hardship to his family. As there was no evidence before the trial court to support Jones' assertion that his family will suffer hardship due to his incarceration, we conclude that the trial court did not abuse its discretion by not considering that factor at his probation hearing.

[14] Based on the foregoing, we hold that the trial court did not abuse its discretion by revoking Jones' probation and ordering Jones to serve the balance of his previously-suspended sentence in F6-31 in the DOC.

CONCLUSION

[15] In sum, we conclude that the trial court did not abuse its discretion by revoking Jones' probation. Accordingly, we affirm the trial court's Order that Jones serve the balance of his previously-suspended sentence.

[16] Affirmed.

[17] Najam, J. and Brown, J. concur