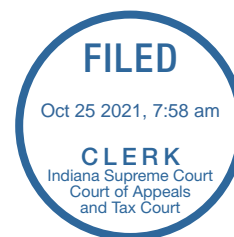


MEMORANDUM DECISION

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

Michael Simpson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 25, 2021

Court of Appeals Case No.
21A-CR-1038

Appeal from the Marion Superior
Court

The Honorable James B. Osborn,
Judge

Trial Court Cause No.
49D21-1607-F4-26233

Najam, Judge.

Statement of the Case

- [1] Michael Simpson appeals the trial court’s revocation of his probation. Simpson raises one issue for our review, namely, whether the court erred when it revoked his probation because the subsequent offense that served as the basis for the revocation was resolved by a separate plea agreement.
- [2] We affirm.

Facts and Procedural History

- [3] On July 8, 2016, Simpson was charged with one count of unlawful possession of a firearm by a serious violent felon, as a Level 4 felony, in cause number 49G21-1607-F4-26233 (“F4-26233”).¹ The information also charged Simpson with four additional counts.² Simpson had committed the offenses in June 2016.
- [4] On August 8, 2017, Simpson pleaded guilty under a plea agreement in F4-26233 to unlawful possession of a firearm by a serious violent felon, and in exchange, the State agreed to dismiss the other four counts. The court accepted Simpson’s guilty plea and, on September 1, 2017, sentenced him to six years.

¹ The majority of the pleadings filed in the F4-26233 case contained the caption “49G21,” but the most recent pleadings were filed under the caption “49D21.”

² Prior to the filing of charges in F4-26233, Simpson had been convicted of a serious violent felony – namely, child molesting, as a Class C felony, in cause number 46G06-0402-FB-32691. Appellant’s App. Vol. II at 32.

He was ordered to serve two years executed on home detention. The remaining four years were suspended but included two years of non-reporting probation.

[5] On July 11, 2017, under cause number 48C01-1707-F4-1749 (“F4-1749”), Simpson was charged in Madison County with burglary, as a Level 4 felony, and theft, as a Class A misdemeanor. Simpson pleaded guilty to the charges, and the court sentenced Simpson to six years, with four years executed and two years suspended.³ *See* Appellant’s Add. at 3. The court ordered the sentence to be served concurrent with Simpson’s sentence in F4-26233. *See id.*

[6] In January 2018, Simpson completed the executed portion of his sentence in F4-26233 and began serving his term on probation. However, on March 29, 2018, the State filed a notice of probation violation in F4-26233, after Simpson was charged in Johnson County with Class A misdemeanor driving while suspended, in cause number 41H02-1803-CM-322, and with Class A misdemeanor conversion and Class B misdemeanor battery, in cause number 41D03-1803-CM-264. On May 31, 2018, Simpson admitted to the violation and was continued on probation.

[7] On August 10, 2018, Simpson was charged in Madison County, under cause number 48C01-1808-F6-2005 (“F6-2005”), with Level 6 felony unlawful entry by a serious sex offender. As a result, on August 27, 2018, the State filed a

³ Simpson committed the offenses in F4-1749 in June 2016, approximately one week prior to committing the offenses in F4-26233. *See* Appellant’s App. Vol. II (Confidential) at 123. However, he did not plead guilty to the charges in F4-1749 until January 2, 2019. Appellant’s App. Vol. II at 203.

second notice of probation violation in F4-26233. That same day, the trial court issued a warrant for Simpson's arrest. On January 2, 2019, Simpson pleaded guilty in F6-2005, and the court sentenced him to two years executed on home detention, with the sentence to be served consecutive to his sentence in F4-1749. *Id.* at 4.

[8] After the State had filed the second notice of probation violation in F4-26233, Simpson, on April 12, 2021, filed a motion in which he asserted that he was "not sure" if the court could revoke his "suspended time" under F4-26233. Appellant's App. Vol. II at 203. Simpson maintained that he had entered into a plea agreement under F4-1749, which provided that that sentence be served concurrent with the sentence in F4-26233, and, therefore, according to Simpson, the court "must consider [his] sentence in [F4-26233] to be complete." *Id.* at 204.

[9] A fact-finding hearing was held on the State's second notice of probation violation on May 27, 2021. At the hearing, Simpson admitted that he had violated the terms of his probation in F4-26233 by committing the offense in F6-2005. *See* Tr. Vol. II at 22, 23. However, he reiterated his assertion that "his sentence could be considered to have already been served" because it ran concurrent with his sentence in F4-1749, which he contended had "concluded" on April 27, 2021. *Id.* at 37, 38. The State responded, asserting that Simpson's sentence in F4-26233 had "not finished" and that "there is a sentence left to serve[.]" *Id.* at 40. At the conclusion of the hearing, the court found that Simpson violated the terms of his probation in cause F4-26233. The court

revoked Simpson's placement on probation and ordered him to serve two years of his previously suspended sentence, with one year executed at the Department of Correction ("DOC") and one year on home detention. This appeal ensued.

Discussion and Decision

[10] Simpson contends that the trial court erred when it revoked his probation. "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). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Id.*; *see also* Ind. Code § 35-38-2-3(a) (2015). Indeed, violation of a single condition of probation is sufficient to revoke probation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Upon determining that a probationer has violated a condition of probation, the trial court may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." Ind. Code § 35-38-2-3(h)(3). "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." *Prewitt*, 878 N.E.2d at 188. "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." *Id.* We review a trial court's decision to revoke probation and a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. *Id.* (citing *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*).

An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[11] Specifically, Simpson asserts that “the trial court’s discretion regarding the alleged probation violation was limited by the plea agreements that controlled the sentences imposed under [the] three separate cause numbers in Marion and Madison Counties.” Appellant’s Br. at 12. Simpson explains that “the terms of the plea agreement embodied in the instant [F4-26233 sentencing order] called for th[at] sentence to be served concurrently with [the sentence imposed under F4-1749] which, in turn, linked its sentence to [that under F6-2005].” *Id.* at 10. According to Simpson, “[b]ecause the concurrent sentence under [F4-1749] describes how the sentence under [F6-2005] is to be dealt with, that specific crime cannot be the basis for the instant violation of probation in [F4-26233]” and the “trial court was bound by the plea agreements . . . and was estopped from using [F6-2005] as a basis for violation of probation[.]” *Id.* at 11-12, 14. Simply put, Simpson maintains that, because the punishment for the offense in F6-2005 was incorporated into a plea agreement, it “cannot serve as the basis for revoking” his probation. *Id.* at 16.

[12] In support of his argument, Simpson relies on *Grider v. State*, 976 N.E.2d 783 (Ind. Ct. App. 2012). But Simpson’s reliance on *Grider* is misplaced, as that case is distinguishable from the instant case. In *Grider*, Leslie Grider was charged under three separate cause numbers with numerous felonies. She pleaded guilty as charged, and the plea agreement provided that her sentence would “be open to the Court with all counts to run concurrently.” *Id.* at 785

(internal quotation marks omitted). The State argued that that provision meant the sentences for each of the counts in each cause number would run concurrently while the trial court could still run the aggregate sentences in the three causes consecutive to one another. *Id.* at 786. Grider argued the term meant all counts in all cause numbers would run concurrently. *Id.* However, the trial court imposed consecutive sentences.

[13] On appeal, this court reversed the trial court’s judgment, noting that “[o]ur courts have long held that plea agreements are in the nature of contracts entered into between the defendant and the State”; plea agreements are “contractual in nature, binding the defendant, the [S]tate, and the trial court”; and “we . . . look to principles of contract law when construing plea agreements to determine what is reasonably due to the defendant.” *Id.* at 785-786 (internal citations omitted). We held that the sentencing provision in Grider’s plea agreement was not ambiguous, and the plain meaning of the language indicated the parties’ intention that the trial court would impose concurrent sentences. *Id.* at 786.

[14] Here, unlike in *Grider*, Simpson’s sentence in F4-26233 was in accordance with his original plea agreement. Simpson pleaded guilty to unlawful possession of a firearm by a serious violent felon, and, in exchange, the State dismissed the four other charges. The sentencing order provided that Simpson’s sentence in that case would run concurrent with his sentence in F4-1749. Simpson later pleaded guilty to committing the offense in F6-2005, and his sentence in F6-2005 was order to be served consecutive to the sentence in F4-1749. Simpson’s commission of the offense in F6-2005 was a violation of his probation under

F4-26233, and Simpson admitted to having violated his probation. The trial court determined that Simpson's probation in F4-26233 should be revoked, and Simpson was sentenced in F4-26233 to serve one year in the DOC and one year on home detention. That sentence was ordered to be served concurrent with his sentence in F4-1749—as was Simpson's original sentence in F4-26233. And, the fact that Simpson's sentences in F4-26233 and F4-1749 would run concurrently, that is, at the same time, did not obviate any of the other terms and conditions of Simpson's plea agreements.

[15] Furthermore, Simpson cites no authority, besides his misplaced reliance on *Grider*, to support the proposition that his sentence in F4-26233 had already been served when his concurrent sentence in F4-1749, an unrelated case in Madison County, had been “concluded.” And Simpson has not otherwise shown why the trial court was “estopped” from using his guilty plea in F6-2005 as a basis for violation of his probation in F4-26233. While Simpson's sentences in F4-26233 and F4-1749 ran concurrently, the concurrent sentences did not affect the conditions of his probation. Moreover, Simpson admitted to having violated his probation, which is sufficient to sustain the revocation order. Violation of a single condition of probation is sufficient to revoke probation. *Gosha*, 873 N.E.2d at 663.

[16] Finally, Simpson conflates the sentence imposed in F6-2005, following his guilty plea in that cause, with the sentence imposed in F4-26233 following the trial court's revocation of his probation. Simpson admitted to committing the offense in F6-2005, and the court sentenced him accordingly. Still, Simpson's

commission of the offense in F6-2005 while serving on probation in F4-26233 was a violation of his probation. Upon finding that Simpson violated the conditions of his probation in F4-26233, the court was within its discretion to order execution of Simpson's suspended sentence.

[17] We hold that Simpson's sentence in F4-26233 had not expired and that the revocation of his probation did not violate his several plea agreements. Thus, the trial court did not abuse its discretion when it revoked Simpson's probation in F4-26233 – based upon Simpson's guilty plea in F6-2005 – and ordered Simpson to serve one year in the DOC and one year on home detention.

[18] Affirmed.

Riley, J., and Brown, J., concur.