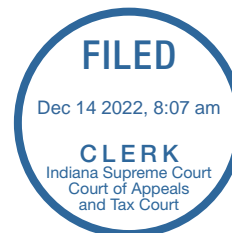


MEMORANDUM DECISION

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

Terrance Ballard,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 14, 2022

Court of Appeals Case No.
22A-CR-473

Appeal from the Vermillion Circuit
Court

The Honorable Jill D. Wesch,
Judge

Trial Court Cause No.
83C01-1308-FA-8

Robb, Judge.

Case Summary and Issue

- [1] Terrance Ballard appeals the trial court's order revoking his probation and ordering him to serve five years in community corrections. He raises one issue for our review, which we restate as whether the trial court abused its discretion by revoking his probation. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

- [2] On January 29, 2015, Ballard pleaded guilty to dealing in cocaine, a Class B felony. The trial court sentenced him to twenty years with thirteen years suspended and placed him on probation for five years. The remainder of Ballard's sentence was to be executed in the Indiana Department of Correction. Ballard's probation began in June 2017. Ballard's probation contained the following terms and conditions:

You shall behave well and not violate any laws.

You shall not possess, consume or possess in your body any controlled substance except as prescribed for you by a licensed physician. You shall submit to random drug screenings when requested by the Probation Officer or Law Enforcement Officer. By signing this Order, you waive any objection to the admissibility of the results of the tests as they are received by the Court into evidence at any Revocation Hearing. You shall sign the Waiver and Stipulation of Test Results form. You shall be responsible for any and all cost[s] of this testing.

Appellant's Appendix, Volume II at 31.

- [3] On September 16, 2019, the State filed a motion for revocation of probation. Ballard admitted to “violating the terms of his probation by committing a new crime.”¹ *Id.* at 12. The trial court revoked twelve days of his probation.
- [4] On February 4, 2020, the State filed its second motion for revocation of probation. The State's second motion for revocation of probation remained pending when, on May 6, 2021, the State filed its third motion for revocation of probation. In this third motion, the State alleged eleven probation violations including testing positive for THC and alcohol, failing to submit to drug testing, failing to call the drug testing hotline, escape, and being in arrears of \$2,490.
- [5] Ballard admitted to the alleged probation violations in the State's third motion for probation revocation. The State's second motion for revocation of probation was then dismissed. At the dispositional hearing Ballard testified: “I do hold myself accountable for the mistakes that I made. . . . I had some difficult things going on that I didn't manage correctly and it caused me to relapse.” Transcript of Evidence, Volume 2 at 42. Following the dispositional hearing, the trial court

¹ Ballard testified that he was convicted of possession of a firearm.

revoked Ballard’s five years of probation and ordered them to be executed in community corrections.² Ballard now appeals.

Discussion and Decision

I. Standard of Review

[6] Probation is a “matter of grace” left to the discretion of the trial court, 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.* The State need only prove the alleged violations by a preponderance of the evidence, and when reviewing a revocation, we will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of the witnesses. *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009).

[7] If the court finds that a person has violated a condition of probation at any time before termination of the probationary period, and the petition to revoke is filed within the probationary period, the court may impose one or more sanctions, including ordering execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(h). A trial court’s decision

² Ballard’s community corrections disposition was to be executed as a direct commitment to in-home detention. *See Tr.*, Vol. 2 at 49. However, Ballard was not approved for home detention by West Central Regional Community Corrections until after he moved, and a reassessment was conducted. *See id.* at 65.

imposing sanctions for a probation violation is reviewable using the abuse of discretion standard. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law. *Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015), *trans. denied*.

II. Revocation of Probation

[8] Ballard argues the trial court abused its discretion by revoking his probation and ordering him to serve five years in community corrections on in-home detention. Probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). “First, the court must make a factual determination that a violation of a condition of probation actually occurred.” *Id.* If a violation is proven, the trial court then must determine if the violation warrants revocation. *Id.* Here, Ballard admitted to his probation violation. When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. *Sanders*, 825 N.E.2d at 955. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.*

[9] The selection of an appropriate sanction will depend upon the severity of the defendant’s probation violation. *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Ballard contends the revocation of his probation was “not proportionate to the nature of his violations.” Brief of the Appellant at 11. Specifically,

Ballard argues that his probation revocation was inappropriate because his admitted violations were “technical in nature.” *Id.* When “violations are technical in nature, the trial court, in its discretion, *may* decide to continue the probationer on probation without modification.” *Brown v. State*, 162 N.E.3d 1179, 1184 (Ind. 2021) (holding the trial court abused its discretion when it ordered defendant to serve the remainder of his sentence based on its determination that defendant had missed scheduled appointments with his probation officer) (emphasis added) (citation omitted). And “such determination is better exercised by the trial court[.]” *Id.*

[10] Here, Ballard admitted to the probation violations including testing positive for THC and alcohol, failing to submit to drug testing, failing to call the drug testing hotline, and being in arrears of \$2,490. Ballard’s violations are not simply technical in nature given that Ballard admitted to testing positive for THC twice. We have held that an admission to smoking marijuana is sufficient to support the revocation of probation. *Lampley v. State*, 31 N.E.3d 1034, 1038 (Ind. Ct. App. 2015). Further, the presence of a single violation is sufficient, by itself, to warrant revocation of probation, *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*, and Ballard has multiple violations.

[11] Ballard also argues that he should be granted leniency because he “admitted to violating his probation and recognize[s] his need for help.” Br. of the Appellant at 12. However, this is unpersuasive as Ballard has repeatedly violated probation. Not only does Ballard have a multitude of probation violations in

the current revocation matter, he has a history of violating probation which led the State to file two prior motions for revocation of probation.

[12] Accordingly, we cannot say the trial court's decision to revoke Ballard's probation and order him to serve five years in community corrections was an abuse of discretion.

Conclusion

[13] We conclude the trial court did not abuse its discretion by revoking Ballard's probation. Accordingly, we affirm.

[14] Affirmed.

Mathias, J., and Foley, J., concur.