

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marcus E. Hardy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2022

Court of Appeals Case No.
22A-CR-1071

Appeal from the Lawrence
Superior Court

The Honorable Robert R. Cline,
Judge

Trial Court Cause No.
47D02-1911-F6-2281

Altice, Judge.

Case Summary

- [1] Marcus E. Hardy appeals the revocation of his probation, claiming that the trial court abused its discretion in ordering him to serve 850 days of his previously suspended sentence in the Indiana Department of Correction (DOC). Hardy contends that his subsequent arrest for possessing “only a user-amount of methamphetamine” did not justify the sanction that the trial court imposed. *Appellant’s Brief* at 2, 8.
- [2] We affirm.

Facts and Procedural History

- [3] On June 10, 2021, Hardy pled guilty to possession of methamphetamine, a Level 6 felony, and was subsequently sentenced to 910 days of incarceration in the DOC, with 900 days suspended. Hardy received credit for ten days served and was placed on probation for one year.
- [4] On September 27, 2021, the State filed a petition to revoke Hardy’s probation along with a petition to revoke his suspended sentence, alleging that Hardy violated various conditions of probation including missing appointments with the probation department, failing to comply with a court-ordered drug program, failing to schedule community service, and not providing proof of his GED.
- [5] When Hardy failed to appear at his January 7, 2022 evidentiary hearing, the trial court issued a warrant for his arrest. On March 9, 2022, Hardy was

arrested on the warrant, and as Monroe County Sheriff's deputies were taking Hardy into custody, they seized a quantity of methamphetamine from his vehicle. The State then filed an amended petition to revoke Hardy's suspended sentence, alleging that he had committed possession of methamphetamine, a Level 6 felony.

[6] At an evidentiary hearing on April 11, 2022, a probation officer testified that Hardy had missed at least three appointments. Hardy admitted at the hearing that "there were wide periods of time" where he failed to report. *Transcript Vol. II* at 34. Both Monroe County Sheriff's deputies testified that they found a "user amount" of methamphetamine in the center console of Hardy's vehicle during the arrest. *Id.* at 24-26.

[7] The trial court determined that Hardy violated the terms of his probation by repeatedly failing to report to probation and by committing the additional criminal offense of possession of methamphetamine. The trial court ordered Hardy to serve 850 days of his previously suspended sentence.

[8] Hardy now appeals.

Discussion and Decision

[9] A defendant is not entitled to serve a sentence on probation or in a community corrections program, and placement in either is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). The grant of probation is left to the discretion of the trial court,

which determines the conditions of probation. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007); *see also* Ind. Code § 35-38-2-3. The trial court may revoke a defendant’s probation if the conditions are violated. *Prewitt*, 878 N.E.2d at 188.

[10] We review the trial court’s sanctioning decision for probation violations for an abuse of discretion. *Id.* An abuse of discretion only occurs when the decision is clearly against the logic and effect of the facts and circumstances before it. *Wilkerson v. State*, 918 N.E.2d 458, 464 (Ind. Ct. App. 2009). Although a probationer must be afforded the opportunity to present mitigating factors, the trial court is not required to consider aggravating and mitigating factors when deciding whether to revoke probation. *Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Moreover, a single violation of a condition of probation is sufficient to permit the trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

[11] In this case, the evidence established that Hardy missed at least three appointments with the probation department, and he admitted that there were times “when he did not report.” *Transcript Vol. II* at 34. The two Sheriff’s deputies testified at the revocation hearing that they seized a “user amount” of methamphetamine from Hardy’s vehicle during the arrest. *Id.* at 24-26.

[12] Although Hardy contends that the new methamphetamine offense occurred before he was afforded the opportunity to enter a treatment program, the evidence shows otherwise. Hardy, in fact, did not follow through with recommended treatment, claiming that “they never called him back.” *Id.* at 33-

34. Hardy was also afforded a prior opportunity to report to probation and “get into compliance” after the initial revocation petition was filed on September 27, 2021. *Appendix Vol. II* at 61. Hardy failed to report as ordered, and he did not appear at his initially scheduled evidentiary hearing that resulted in the issuance of the warrant for his arrest.

[13] In sum, Hardy has consistently refused to obey our criminal laws, respect the trial court’s orders, and follow the rules of his probation. Such refusals demonstrate Hardy’s need for a correctional environment with more detailed supervision to achieve rehabilitation. *See, e.g., Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007) (recognizing that the defendant’s placement in the DOC was appropriate when the evidence showed that prior less restrictive efforts at rehabilitation had failed). Moreover, Hardy committed another criminal offense—possession of methamphetamine, a Level 6 felony—during his probationary period. Hardy’s claim that he possessed a mere “user amount” of the drug and should not be sent back to the DOC is immaterial and unpersuasive in light of the fact that he was on probation for the exact same conduct. *See, e.g., McCauley v. State*, 22 N.E.3d 743, 747 (Ind. Ct. App. 2014) (upholding the trial court’s sanction for a probation violation where the defendant committed an alcohol-related offense while on probation for a similar crime), *trans. denied*.

[14] Given these circumstances, we conclude that the trial court’s order for Hardy to serve 850 days of his previously suspended sentence in the DOC was not an abuse of discretion.

[15] Judgment affirmed.

Brown, J. and Tavitas, J., concur.