

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Thomas S. Mullins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 31, 2022

Court of Appeals Case No.
22A-CR-1161

Appeal from the Jefferson Circuit
Court

The Honorable Donald J. Mote,
Judge

Trial Court Cause No.
39C01-2011-F6-1288

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Thomas S. Mullins (Mullins), appeals the trial court's revocation of his probation and imposition of his previously suspended sentence.

[2] We affirm.

ISSUE

[3] Mullins presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion when it imposed the entirety of his previously suspended sentence after finding he had violated his probation.

FACTS AND PROCEDURAL HISTORY

[4] On October 22, 2020, the State filed an Information, charging Mullins with two Counts of non-support of a dependent child, Level 6 felonies. After pleading guilty to one Count, the trial court dismissed the second Count and sentenced him to 900 days, suspended to community corrections. Almost a year later, on September 10, 2021, Mullins reported to community corrections for the first time, where he reviewed the terms and conditions of his community corrections service with his case manager.

[5] Mullins tested positive for methamphetamine and marijuana on September 24 and October 29, 2021. On November 27, 2021, he admitted to the use of methamphetamine and marijuana. On December 9, 2021, Mullins admitted to the use of benzodiazepines and marijuana. On January 4, 2022, Mullins again

tested positive for methamphetamine and marijuana. At no time during his community corrections service did Mullins present a clean drug screen. On January 21, 2022, Mullins failed to attend an appointment with his case manager and his whereabouts were unknown until he was arrested in March 2022.

[6] On March 15, 2022, the State filed a petition to revoke Mullins' probation, alleging that he had violated the terms and conditions of community corrections by admitting to and testing positive for methamphetamine, marijuana, and benzodiazepines five times between September 2021 and January 2022. On April 15, 2022, the trial court conducted an evidentiary hearing. After the conclusion of the evidence, the trial court concluded that Mullins had violated the terms and conditions of his community corrections service and ordered him to serve the balance of his previously suspended sentence at the Department of Correction (DOC).

[7] Mullins now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[8] Mullins contends that the trial court abused its discretion by imposing the entirety of his previously suspended sentence "in light of the technical nature of [his] violations, his homelessness, and his ready admission to violating probation." (Appellant's Br. p. 7). Both probation and community corrections programs serve as alternatives to commitment to the DOC, and both are made at the sole discretion of the trial court. *McQueen v. State*, 862 N.E.2d 1237, 1242

(Ind. Ct. App. 2007). A defendant is not entitled to serve a sentence in either probation or a community corrections program. *Id.* Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right. *Id.*

- [9] The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation, that is, revocation of a community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Id.* If a trial court finds that the defendant has violated a condition at any time before termination of the probation period, and the petition to revoke is filed within the probationary period, the trial court may impose one or more sanctions, including ordering execution of all or part of the sentence that was suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(h). 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.” *Brandenburg v. State*, 992 N.E.2d 951, 953 (Ind. Ct. App. 2013), *trans. denied*. If this discretion were not given to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation. *Id.* Accordingly, a trial court’s sentencing decision for a probation violation is reviewable using the abuse of discretion standard. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[10] After being placed on probation on October 22, 2020, Mullins did not report to community corrections until almost a year later, on September 10, 2021. After he reported and was ordered to submit to drug screens, Mullins always tested positive. Rather, between September 2021 and January 2022, he either tested positive for illegal drugs or admitted that he would test positive on a monthly basis. Within four months of reporting to community corrections, Mullins ceased attending appointments with his case manager and his whereabouts became unknown until he was arrested in March 2022. Although Mullins claims that his violations were merely technical, we have previously determined that positive “drug screens are hardly mere technical violations of probation.” *Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019), *trans. denied*. Furthermore, the trial court did not find that Mullins violated his probation due to his homelessness but based his violation on his positive drug screens after an evidentiary hearing was held where the State established the violations by a preponderance of the evidence.

[11] Although the trial court provided Mullins an opportunity to show that he can lead a law-abiding life and “demonstrate his rehabilitation while serving a part of his sentence outside the prison walls,” Mullins failed to make any progress in his rehabilitation and instead demonstrated an unwillingness to follow the rules of probation. *Purdy v. State*, 708 N.E.2d 20, 23 (Ind. Ct. App. 1999). Therefore, we cannot say that the trial court abused its discretion by ordering Mullins to serve the balance of his previously suspended sentence.

CONCLUSION

- [12] Based on the foregoing, we hold that the trial court did not abuse its discretion by revoking Mullins' probation and imposing the entirety of his previously suspended sentence.
- [13] Bailey, J. and Vaidik, J. concur