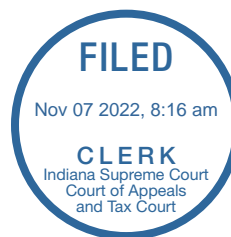


MEMORANDUM DECISION

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

Thomas G. Spiece,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 7, 2022

Court of Appeals Case No.
22A-CR-1396

Appeal from the Wabash Superior
Court

The Honorable Benjamin D.R.
Vanderpool, Judge

Trial Court Cause No.
85D01-1912-CM-1736

Crone, Judge.

Case Summary

- [1] After failing to appear at multiple hearings, Thomas G. Spiece admitted to violating a condition of his probation, and the trial court executed eight months of his one-year suspended sentence. Spiece argues that this sanction is an abuse of discretion. We disagree and therefore affirm.

Facts and Procedural History¹

- [2] In December 2019, the State charged Spiece with class A misdemeanor criminal trespass. On July 28, 2021, after a bench trial during which Spiece represented himself, the court found him guilty as charged and ordered a one-year sentence suspended to informal probation. The very next day, the State filed a petition to revoke Spiece’s probation alleging that he had failed to report to the probation department immediately after the sentencing hearing as required by the written conditions of probation, which had been read in open court but Spiece had refused to sign. The trial court set an initial violation hearing for August 9, at which Spiece failed to appear. The court issued a warrant for Spiece’s arrest, which was served on August 26. Spiece appeared for a hearing on August 30, during which the court entered a denial on his behalf. Spiece posted bond on September 15. After several continuances, a factfinding hearing was set for April 12, 2022, at which Spiece again failed to appear. His counsel told the

¹ We remind Spiece’s counsel that an appellant’s statement of facts “shall describe the facts relevant to the issues presented for review[.]” Ind. Appellate Rule 46(A)(6). Spiece’s statement of facts includes numerous irrelevant facts and procedural details, as well as dates that do not correspond to the relevant entries in the chronological case summary.

court that Spiece had informed him via text that “he didn’t feel that his presence was necessary for him to be here today for these proceedings” Tr. Vol. 2 at 25. The court issued a no-bond warrant for Spiece’s arrest, which was served on June 6.²

[3] The factfinding hearing was held on June 9, and Spiece appeared both in person and by counsel. Spiece admitted the allegations in the State’s petition. The prosecutor noted that Spiece had served twenty-three days of his sentence, and thus the court “could give him a little bit more than 11 months[,]” but ultimately recommended “8 months and to terminate his probation.” *Id.* at 39. The prosecutor stated, “Anything less than that, and you certainly shouldn’t put him back on probation because he’s not going to abide by that. He’s not going to show up and we’ll have to issue other warrants. I think it’s a complete waste of our time and his.” *Id.* at 39. The trial court told Spiece,

[O]n that day after sentencing was had, I had informed you or ordered you to report to probation directly to sign terms. You simply said nothing. You picked up your briefcase. You walked out, and you walked directly out the front door.[...] From day one, even at your initial hearing in this cause, I still recall that, I don’t recall [...] all the initial hearings, but I recall yours just because of the way you behaved at that initial hearing, sir. So, I think [the prosecutor’s] recommendation is more than fair based upon the way you have behaved.[...] So I am going to follow [the

² At the factfinding hearing, Spiece’s counsel claimed that Spiece “voluntarily turned himself in on this warrant.” Tr. Vol. 2 at 41.

prosecutor's] recommendation. Eight months Wabash County Jail. Terminate probation unsatisfactory.

Id. at 41-42 (paragraph format altered).

Discussion and Decision

[4] Spiece challenges the trial court's decision to execute eight months of his one-year suspended sentence as a sanction for violating his probation. "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). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id.* Here, Spiece admitted to violating a condition of his probation. After a court finds that the defendant has violated a condition of probation, the court may impose one or more of the following sanctions: (1) continue the defendant on probation, with or without modifying or enlarging the conditions; (2) extend the defendant's probationary period for not more than one year beyond the original probationary period; (3) order execution of all or part of the sentence that was suspended at the initial sentencing. Ind. Code § 35-38-2-3(h). "[I]n determining the appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances." *Killebrew v. State*, 165

N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*.³ “Evidence of a single probation violation is sufficient to sustain the revocation of probation.” *Smith v. State*, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000).

- [5] “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.*
- “Accordingly, a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.” *Id.* (citation omitted).

- [6] Spiece ultimately admitted to the alleged probation violation, but only after failing to appear at multiple hearings, which demonstrated contempt for the criminal justice system and wasted significant time and scarce resources. In light of these circumstances, we readily conclude that Spiece has failed to

³ Consequently, we decline Spiece’s invitation to reweigh any alleged mitigating factors, one of which is that “extended incarceration would provide an undue hardship on him due to his medical condition.” Appellant’s Br. at 16. Spiece did not raise this alleged mitigator at the factfinding hearing, so it is waived for consideration on appeal. *McSchooler v. State*, 15 N.E.3d 678, 684 (Ind. Ct. App. 2014). Waiver notwithstanding, the medical condition to which he refers is mentioned in an unauthenticated letter purportedly from a physician that was faxed to the trial court in February 2022, months before the factfinding hearing. The letter recommends that Spiece’s “incarceration in jail be postponed until his current [medical issues] have resolved” Appellant’s App. Vol. 2 at 94. Spiece presented no evidence that those issues persisted at the time of the factfinding hearing.

establish that the trial court abused its discretion in executing only eight months of his suspended sentence.

[7] Affirmed.

May, J., and Weissmann, J., concur.