

# 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

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Morgan Whaley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 31, 2022

Court of Appeals Case No.  
22A-CR-1409

Appeal from the Ripley Superior  
Court

The Honorable Jeffrey L. Sharp,  
Judge

Trial Court Cause No.  
69D01-2203-F6-39

**Tavitas, Judge.**

## Case Summary

- [1] Morgan Whaley appeals the trial court's order imposing a portion of her previously-suspended sentence as a sanction for Whaley's probation revocation. Whaley argues that the trial court abused its discretion by imposing 730 days of her previously-suspended 898-day sentence. Finding no abuse of discretion, we affirm.

## Issues

- [2] Whaley presents one issue on appeal, which we restate as whether the trial court abused its discretion by imposing a portion of her previously-suspended sentence.

## Facts

- [3] On March 14, 2022, the State charged Whaley with: Count 1, attempted criminal confinement, a Level 6 felony; and Count II, domestic battery, a Class A misdemeanor. Whaley pleaded guilty to both Counts.
- [4] On March 22, 2022, the trial court entered judgments of conviction on both counts. The trial court sentenced Whaley to concurrent sentences of 910 days on Count I and 365 days on Count II, with 898 days suspended to probation. The conditions of Whaley's probation included daily reporting to her probation officer, abstention from alcohol and illegal drugs, and that Whaley notify her probation officer within twenty-four hours of any change in her address.

[5] On May 9, 2022, the State filed a petition to revoke Whaley’s probation. The State alleged Whaley: (1) tested positive for methamphetamine on May 2, 2022; (2) failed to report to Ripley County Court Services on May 5, 2022, May 6, 2022, and May 9, 2022; and (3) failed to report a change of address within twenty-four hours. At the hearing held on May 18, 2022, Whaley admitted the allegations and to violating the conditions of her probation.

[6] The trial court found that Whaley violated her probation. In determining the sanction for Whaley’s probation violations, the trial court considered Whaley’s criminal history, which included two previous probation violations. The trial court also considered Whaley’s admission to her instant probation violations to be mitigating. The trial court imposed 730 days of Whaley’s previously-suspended sentence. Whaley now appeals.

### **Discussion and Decision**

[7] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). “It is within the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated.” *Id.* “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Id.* “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances,” *id.*, “or when the trial court misinterprets the law.” *Id.* (citing *State v. Cozart*, 897 N.E.2d 478, 483

(Ind. 2008)). “We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of the witnesses.” *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010) (quoting *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009)).

[8] “Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation actually occurred.” *Heaton*, 984 N.E.2d at 616 (citing *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008)). “Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation.” *Id.*

[If the trial court] finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the 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).

[9] The trial court did not abuse its discretion by imposing 730 days of Whaley’s previously-suspended sentence. Whaley violated the conditions of her probation in multiple ways and on multiple occasions. Whaley has also twice violated the conditions of her probation in other criminal cases. While the trial court found Whaley’s admission to the allegations was “mitigating,” the trial court was “not required to balance aggravating and mitigating circumstances” in determining the appropriate sanction for her probation violation. *See*

*Killibrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021) (citing *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*), *trans. denied*.

[10] Whaley argues her violations are “primarily technical in nature.” Appellant’s Br. p. 9. Failed drug screens, however, are not a “mere ‘technical’ violation[.]” *Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019), *trans. denied*. And while the “‘mere technicality’ of some violations may warrant ‘a less severe sanction,’ . . . ‘such determination is better exercised by the trial court.’” *Hampton v. State*, 71 N.E.3d 1165, 1174 n.10 (Ind. Ct. App. 2017) (quoting *Heaton*, 984 N.E.2d at 618)), *trans. denied*. The trial court, accordingly, did not err.

## **Conclusion**

[11] The trial court did not abuse its discretion in imposing 730 days of Whaley’s previously-suspended sentence as a sanction for Whaley’s probation revocation. Accordingly, we affirm.

[12] Affirmed.

Brown, J., and Altice, J., concur.