

## 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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Matthew G. Hunt,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 29, 2022

Court of Appeals Case No.  
22A-CR-1808

Appeal from the Ripley Superior  
Court

The Honorable Jeffrey L. Sharp,  
Judge

Trial Court Cause No.  
69D01-1711-F6-220

**Tavitas, Judge.**

## Case Summary

- [1] Matthew Hunt appeals the trial court's order revoking his probation and imposing his previously suspended 1,414-day sentence. Hunt argues that the trial court abused its discretion by imposing the entirety of his previously suspended sentence as a sanction for his probation violations. We find that the trial court did not abuse its discretion and affirm.

## Issue

- [2] Hunt raises one issue on appeal, which we restate as whether the trial court abused its discretion by imposing the entirety of Hunt's previously suspended sentence as the sanction for Hunt's probation violations.

## Facts

- [3] On November 27, 2017, the State charged Hunt with three counts: Count I, possession of methamphetamine; Count II, possession or control of a hypodermic needle; and Count III, maintaining a common nuisance, all Level 6 felonies. On April 19, 2018, the trial court granted the State's request to amend its information and add Count IV, attempted dealing in Schedule I, II, or III controlled substance, a Level 6, felony.
- [4] On September 17, 2019, the State and Hunt executed a plea agreement wherein Hunt agreed to plead guilty to Counts II and IV and serve a cumulative sentence of 1,460 days in the Department of Correction, with 1,414 days suspended to probation. That same day, the trial court held a sentencing

hearing in which it accepted the plea agreement, entered judgments of conviction on Counts II and IV, and sentenced Hunt according to the terms of the plea agreement.<sup>1</sup>

- [5] On May 2, 2022, the State filed a petition for probation violation that alleged Hunt violated the terms of his probation by committing a new offense: operating a motor vehicle while under the influence. On May 31, 2022, the State amended its petition to allege that Hunt also violated the terms of his probation by testing positive for codeine on May 25, 2022.
- [6] The trial court held a hearing on the State’s probation violation allegations on September 2, 2022. Hunt admitted to the State’s allegations. The trial court revoked Hunt’s probation and imposed the entirety of his previously suspended sentence. Hunt now appeals.

## **Discussion and Decision**

- [7] Hunt argues that the trial court abused its discretion by imposing his previously suspended sentence. We disagree.
- [8] “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

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<sup>1</sup> The State subsequently dismissed Counts I and III.

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)).

[9] “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).

[10] Here, Hunt admitted to violating the terms of his probation, and the trial court imposed the entirety of Hunt’s previously suspended sentence as a sanction. Hunt argues that the trial court abused its discretion by failing to consider the hardship that Hunt’s incarceration would impose on his family, his relapse and need for substance abuse treatment, and his successful completion of two years and three months of his probationary period. “However, in determining the

appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances.” *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*. While the trial court could have weighed the hardship to Hunt’s family and these other factors in favor of a lighter sanction, it had no obligation to do so.

[11] Hunt violated the terms of his probation both by operating a vehicle while under the influence and by failing a drug test. These violations, like Hunt’s underlying offenses, all involved illegal substances. In addition, Hunt has an extensive criminal history, which includes two previous probation violations and numerous substance-related offenses similar to the ones for which he was serving probation in this case. *See Utley v. State*, 167 N.E.3d 777, 784 (Ind. Ct. App. 2021) (considering probationer’s criminal history in affirming sanction for probation revocation), *trans. denied*. In light of Hunt’s multiple violations, the nature of those violations, and his criminal history, the trial court was within its discretion to find that Hunt was a poor candidate to continue on probation. The trial court, accordingly, did not abuse its discretion by imposing Hunt’s previously suspended sentence.

## **Conclusion**

[12] The trial court did not abuse its discretion by imposing Hunt’s previously suspended sentence as a sanction for his probation violations. Accordingly, we affirm.

[13] Affirmed.

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