

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Candida D. Bentoski,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 26, 2023

Court of Appeals Case No.
23A-CR-677

Appeal from the Montgomery
Superior Court

The Honorable Heather L. Barajas,
Judge

Trial Court Cause No.
54D01-1803-F4-672

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Candida D. Bentoski pled guilty to violating her probation. On appeal, she argues that the trial court abused its discretion in ordering her to serve one year of her previously suspended sentence.

[2] We affirm.

Facts & Procedural History

[3] On March 11, 2018, Bentoski was charged in Cause No. 54D01-1803-F4-672 (F4-672) with Level 6 felony possession of methamphetamine, two counts of Class A misdemeanor carrying a handgun without a license, Class B misdemeanor possession of marijuana, Class C misdemeanor possession of paraphernalia, Level 6 felony possession of a legend drug, Class A misdemeanor possession of a controlled substance, and Level 4 felony unlawful possession of a firearm by a serious violent felon. On March 15, 2018, the State filed an enhancement elevating the Level 6 felony possession of methamphetamine to a Level 5 felony based on possession of a firearm while possessing methamphetamine.

[4] On September 25, 2018, Bentoski pled guilty to Level 6 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, Class C misdemeanor possession of paraphernalia, Level 6 felony possession of a legend drug, and Class A misdemeanor possession of a controlled substance. The

State dismissed the remaining counts. The following day Bentoski was sentenced to an aggregate term of 1090 days suspended to probation. As part of the terms of her probation, Bentoski was required to not violate any law, not consume or possess any controlled substances unless prescribed by a physician, submit to any alcohol and drug tests requested by probation, and report to probation and cooperate as directed. Bentoski was also required to complete mental health counseling and substance abuse evaluation/treatment/education as required by the probation department.

[5] On September 3, 2021, the State filed an agreed violation of probation in which Bentoski admitted that she violated her probation in F4-672 by not completing required counseling. Bentoski agreed to extend her term of probation by five or six months¹ or until she completed the required counseling, whichever came first. On January 6, 2022, before either event occurred, the State filed a petition to revoke Bentoski's probation in F4-672 alleging she had committed a new criminal offense (i.e., theft) under Cause No. 54D01-2112-CM-3380 (CM-3380).

[6] On October 28, 2022, the State filed a second petition to revoke or modify Bentoski's probation alleging that she refused to provide a urine screen, tested positive for a controlled substance, and admitted to ingesting

¹ The agreed violation of probation states that Bentoski's probation was extended by five months or until she completed counseling, whichever came first. However, at the revocation hearing, it was stated that Bentoski had agreed to extend her probation by six months or until she completed counseling.

methamphetamine. On November 3, 2022, the State amended its second petition adding that Bentoski failed to report to scheduled probation appointments and again refused to provide a urine screen.

- [7] On November 18, 2022, Bentoski applied to the Montgomery County Drug Court, but it was determined that she was ineligible for the program. On January 24, 2023, the State filed a recommendation of plea agreement to resolve the pending charges for theft in CM-3380 and the petitions to revoke probation. Pursuant to the plea agreement, Bentoski agreed to plead guilty to one count of misdemeanor theft in CM-3380 and admit to violating her probation in F4-672 in exchange for dismissal of a second charge of theft in CM-3380. The agreement called for a one-year suspended sentence in CM-3380 and left the sanction for violating probation to the trial court's discretion. On February 27, 2023, the trial court sentenced Bentoski to one year, suspended, in CM-3380 and then revoked her probation in F4-672 and ordered her to serve one year in the Montgomery County Jail. Bentoski now appeals.

Discussion & Decision

- [8] When a defendant's probation is revoked, the trial court can "order execution of all or part of the sentence that was suspended at the time of the initial sentence." Ind. Code § 35-38-2-3(h)(3). Once the trial court has determined that the probationer violated the conditions of probation, the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation. *Brown v. State*, 162 N.E.3d 1179, 1183 (Ind. Ct. App. 2021). A trial court's sentencing decision for probation violations is reviewable under the

abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

An abuse of discretion occurs only when “the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

[9] Bentoski argues that the trial court abused its discretion in ordering her to serve one year of her suspended sentence as a sanction for her probation violation. Bentoski points out that following her sentencing in F4-672 in 2018, she went nearly three years before she first violated probation. She further notes that her probation officer and the State agreed that she was an appropriate candidate to return to probation. At the sentencing hearing, she informed the court that she had completed the required counseling and that since being released from jail on November 18, 2022, she had been doing everything probation had requested. For instance, she had passed every drug screen, all her fees had been paid, she continued to go to meetings, she had secured appropriate housing, and she had obtained employment at Toyota in Lafayette. With regard to the sanction for her probation violation, Bentoski requested that she be discharged unsatisfactorily, arguing that she had “managed to get everything kind of back on track” and was currently “in compliance with probation.” *Transcript* at 23.

[10] In deciding the sanction to impose, the trial court observed that Bentoski committed new criminal offenses while on probation and emphasized that she had accumulated three separate probation violations. We recognize and commend Bentoski for her recent, admirable behavior in securing housing and employment and in complying with requirements of probation. Nevertheless, we defer to the trial court’s assessment of the proper sanction for probation

violations and cannot say that under the circumstances in this case, that the trial court abused its discretion.

[11] Judgment affirmed.

May, J. and Foley, J., concur.