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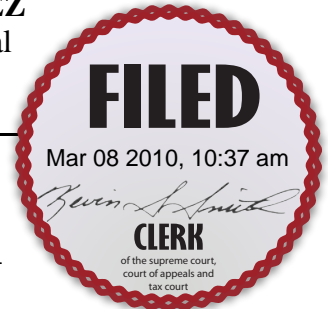
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**IN THE
COURT OF APPEALS OF INDIANA**

BOBBY J. HUMPHRIES,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A04-0908-CR-441

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0607-FB-222

March 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Bobby J. Humphries appeals the trial court's revocation of his probation. We affirm.

Issues

Humphries raises two issues, which we restate as:

- I. whether the trial court erred by revoking his probation;
and
- II. whether the trial court abused its discretion by imposing
thirty months of the previously suspended sentence.

Facts

In July 2006, the State charged Humphries with criminal confinement as a Class B felony, intimidation as a Class C felony, and battery as a Class B misdemeanor. The State alleged that Humphries had confined M.K., his girlfriend's mother, while he was armed with a knife, that Humphries had threatened to kill M.K., and that Humphries had touched A.K., his girlfriend, in a rude, insolent, or angry manner. Humphries pled guilty to intimidation as a Class C felony and battery as a Class B misdemeanor, and the criminal confinement charge was dismissed. The trial court sentenced Humphries to five years in the Department of Correction with four years suspended to probation.

On May 20, 2009, Officer Travis Thompson and Officer Eric Holtzleiter of the Anderson Police Department were dispatched to A.K.'s residence as a result of a 911 hang-up call. Upon his arrival at the residence, Officer Thompson talked to A.K., who had bruising and swelling on her right cheek. A.K. said that Humphries had thrown a box fan onto the floor, breaking it, and that she was struck on the face by flying debris.

Humphries told Officer Thompson that he had been arguing with A.K. and that “she must have punched herself in the face.” Tr. p. 10. Officer Thompson next spoke with A.K.’s four-year-old daughter, who said that “daddy hit mommy.” Id. at 11. A.K. then changed her explanation, claiming that Humphries did not hit her and that she hit herself on the face. The officers believed that A.K.’s injury was consistent with being struck by either a closed fist or an open hand on the face.

In June 2009, the State filed a notice of probation violation, alleging in part that Humphries had committed the new offense of domestic battery as a Class D felony. At a hearing on the matter, Officer Thompson and Officer Holtzleiter testified regarding the events on May 30, 2009. Additionally, A.K. testified that Humphries did not hit her and that she hit herself. The trial court found that “the story that’s weaved here is almost insulting to our intelligence honestly.” Id. at 53. The trial court found that Humphries had violated his probation by committing the new offense of domestic battery as a Class D felony. The trial court ordered Humphries to serve thirty months of his previously suspended sentence with eighteen months executed at the Department of Correction and twelve months executed on work release.

Analysis

I. Probation Revocation

Humphries argues that the evidence is insufficient to support a finding that he violated his probation by committing domestic battery. Probation revocation is governed by Indiana Code Section 35-38-2-3. A probation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State,

706 N.E.2d 547, 551 (Ind. 1999). 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 witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

Where the alleged probation violation is the commission of a new crime, the State need not show that a defendant was convicted of a crime in order for the trial court to revoke the defendant's probation. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), trans. denied. Rather, where "there is evidence submitted at the hearing from which the trial court could find that an arrest was reasonable and that there is probable cause for belief that a defendant violated a criminal law revocation of probation is permitted." Id.

According to Humphries, the State failed to meet its burden of proof because A.K. testified that Humphries did not hit her and the officers' testimony cannot satisfy the burden of proof.¹ The State presented evidence that the officers saw bruising and swelling on A.K.'s right cheek and that the injury was consistent with A.K. being struck by either a closed fist or an open hand on the face. A.K. changed her explanation of the injury from claiming that a piece of the fan struck her to claiming that she struck herself, but her daughter told the officers that "daddy hit mommy." Tr. p. 11. We conclude that

¹ Humphries made no hearsay objection to the officers' testimony during the probation revocation hearing and, on appeal, makes no hearsay argument regarding the testimony. See, e.g., Reyes v. State, 868 N.E.2d 438 (Ind. 2007) (adopting the substantial trustworthiness test regarding the admissibility of hearsay evidence at probation revocation hearings).

the State presented sufficient evidence from which the trial court could find probable cause for a belief that Humphries violated a criminal law by committing domestic battery. There was sufficient evidence to support the revocation of Humphries's probation, and the evidence adduced met the required burden.

II. Sentence

Humphries also argues that the trial court abused its discretion when it imposed thirty months of his previously suspended sentence. We review a trial court's sentencing decision in probation revocation proceedings for an abuse of discretion. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id.

Humphries argues that the trial court should have imposed a lesser sentence given his character. Humphries notes that this was his first probation violation, that he was providing clean drug screens, and that he was attending GED classes. Humphries's argument seems to relate to Indiana Appellate Rule 7(B), which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." However, Indiana Appellate Rule 7(B) does not apply to probation revocation proceedings. See id.

Humphries was on probation after a violent episode involving his girlfriend, A.K., and he is again accused of a violent episode involving A.K.. The trial court acted well within its discretion when it ordered Humphries to serve thirty months of his previously

suspended sentence with eighteen months executed at the Department of Correction and twelve months executed on work release.

Conclusion

There was sufficient evidence to support the revocation of Humphries's probation, and the trial court did not abuse its discretion when it ordered Humphries to serve thirty months of his previously suspended sentence. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.