

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua Hentgen,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2022

Court of Appeals Case No.
22A-CR-717

Appeal from the Miami Superior
Court

The Honorable Daniel C. Banina,
Judge

Trial Court Cause No.
52D02-1811-F5-308

Robb, Judge.

Case Summary and Issue

- [1] Joshua Hentgen appeals the trial court’s revocation of his suspended sentence raising one issue for our review, namely whether the trial court abused its discretion in ordering him to serve his entire previously suspended sentence at the Indiana Department of Correction (“DOC”). Concluding the trial court did not abuse its discretion in imposing this sanction, we affirm.

Facts and Procedural History

- [2] In November 2018, the State charged Hentgen with Level 5 felony carrying a handgun without a license with a prior conviction within fifteen years. Hentgen pleaded guilty as charged. On November 14, 2019, the trial court sentenced him to three years executed in the DOC with two years and 324 days suspended to probation.
- [3] A little over a month later, the Miami County Probation Department (“Probation Department”) filed a notice of probation violation and a petition to modify or revoke probation, alleging Hentgen had violated his probation by failing to report to his probation officer, failing to call the drug test call-in line, and failing to submit to a drug screen. Hentgen was arrested, and, on March 10, 2020, he was released to an inpatient drug treatment facility. As a special condition of his release to the facility, Hentgen was required to follow all of the facility’s rules, stay in touch with his attorney, and timely appear at all his hearings.

- [4] Hentgen failed to appear at a factfinding hearing that took place on June 4, 2020, and the trial court issued an arrest warrant. Two weeks later, Hentgen was arrested in Howard County and charged in Cause No. 34D04-2006-F6-1730 (“F6-1730”) with possession of a narcotic drug and unlawful possession of a syringe, both Level 6 felonies; and possession of paraphernalia as a Class C misdemeanor. Hentgen pleaded guilty in F6-1730, and, on October 15, was sentenced to twelve months on work release.
- [5] An arrest warrant was issued for Hentgen on January 7, 2021, after he again failed to appear for a hearing. The next day, the Probation Department filed a notice of probation violation and a first amended petition to modify or revoke Hentgen’s probation, alleging Hentgen had committed a new offense on November 25, 2020, namely, escape in Howard County under Cause No. 34D02-2012-F6-3632. On June 23, 2021, the Probation Department filed a second amended petition to modify or revoke probation, this time alleging Hentgen violated his probation when he committed the offense in Howard County under Cause No. F6-1730 – specifically, possession of a narcotic drug and/or unlawful possession of a syringe.
- [6] The trial court issued arrest warrants for Hentgen on June 23 and September 16, 2021. On October 8, Hentgen was charged with possession of a narcotic drug in Cass County. On October 14, the Probation Department filed its third amended petition to modify or revoke Hentgen’s probation, alleging Hentgen violated his probation when he committed the offense of possession of a narcotic drug in Cass County.

[7] At a factfinding hearing held on January 13, 2022, Hentgen admitted to the allegations found in the second amended petition to revoke probation, that is, that he committed and was convicted of the additional offense of possession of a narcotic drug and/or unlawful possession of a syringe. The State withdrew all of the remaining probation violation allegations contained in the first, second, and third amended petitions to revoke probation. The trial court then found that Hentgen violated his probation.

[8] At the dispositional hearing, held on February 18, the State argued that Hentgen should serve his entire suspended sentence in the DOC. Hentgen told the trial court that he struggles with addiction and has had “a problem with it for quite some time[.]” Transcript of Evidence, Volume II at 42. He argued that he should be sentenced to time served or returned to probation because he admitted to violating his probation, this is the first time the trial court has found that he violated his probation, and the trial court was required to follow a schedule of progressive sanctions for his probation violation that prohibits a “maximum sentence” in the DOC. *Id.* at 44.

[9] The trial court noted that it “believe[d]” it could impose a maximum sanction “for one simple violation.” *Id.* at 46. The court then looked at “the larger picture” and found that Hentgen “[did] not appear to be a good candidate for [p]robation and apparently . . . is not a good candidate for work release[, b]ecause . . . he failed on the work release program in Howard County.” *Id.* The court revoked the entirety of Hentgen’s probation and ordered him to serve

the two years and 324 days in the DOC. Hentgen now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Probation Revocation

[10] Probation is not a right, but instead, it is a matter of grace left to the trial court's discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Once a trial court orders probation, the judge is given considerable leeway regarding how to proceed and may revoke probation if a violation occurs. *Id.* Accordingly, the decision to revoke probation is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances of the present case. *Id.* On appeal, we do not reweigh the evidence or judge the credibility of witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012). Rather, we consider only the evidence most favorable to the judgment. *Id.*

[11] Hentgen does not dispute that he violated the terms of his probation. His sole argument is that the trial court abused its discretion by ordering him to execute the entirety of his suspended sentence. To begin, we note that probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). The first step requires that the trial court make a factual determination as to whether the probationer violated the terms of his probation. *Id.* Although the probationer is generally entitled to certain due process protections, when the

probationer admits the violation, as Hentgen did, those safeguards are unnecessary and the trial court may proceed to the second step. *Id.*

[12] The second step requires that the trial court determine whether a violation warrants revocation. *Id.* Proof of a single violation is sufficient to permit a trial court to revoke probation. *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997). When the trial court determines revocation is appropriate, Indiana Code section 35-38-2-3(h) provides that the trial court may order one or more of several sanctions, including the execution of all or part of the original suspended sentence. *Holsapple v. State*, 148 N.E.3d 1035, 1039 (Ind. Ct. App. 2020).

II. Schedule of Progressive Sanctions

[13] Hentgen contends his violations were not so severe as to justify the court's decision to revoke the entirety of his suspended time, especially in light of his admission to committing the new offense, his years-long struggle with addiction, his "mental state[,] and his efforts to obtain treatment[.]" Brief of the Appellant at 10. Hentgen makes his argument based on a quote taken from *Brown v. State*: "While it is correct that probation may be revoked on evidence of violation of a single condition, *the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation*" 162 N.E.3d 1179, 1184 (Ind. Ct. App. 2021) (quoting *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013) (emphasis added; citation omitted)). And Hentgen posits that the *Brown* decision "reflects" Indiana Code section 35-38-2-3(e), such that the trial court,

in imposing Hentgen’s sanction, was required to follow the “schedule of progressive probation violation sanctions adopted by the judicial conference of Indiana under IC 11-13-1-8” and that the trial court’s failure to do so was an abuse of the court’s discretion.¹ Br. of the Appellant at 9-10. We disagree.

[14] In *Brown*, we held the trial court abused its discretion when it ordered Brown to serve the remainder of his sentence based on its determination that Brown had missed scheduled appointments with his probation officer. 162 N.E.3d at 1184. However, the testimony from Brown’s probation officer established that Brown had far fewer probation violations than determined by the trial court when it revoked Brown’s probation. For example, Brown’s probation officer testified that Brown made up for some of those missed appointments, but the probation officer did not make a record of those appointments. The probation officer also testified that Brown kept some of the appointments, but the appointments were with a different probation officer. *Id.* at 1182-83.

¹ In its entirety, Indiana Code section 35-38-2-3(e) provides:

A person may admit to a violation of probation and waive the right to a probation violation hearing after being offered the opportunity to consult with an attorney. If the person admits to a violation and requests to waive the probation violation hearing, the probation officer shall advise the person that by waiving the right to a probation violation hearing the person forfeits the rights provided in subsection (f). The sanction administered must follow the schedule of progressive probation violation sanctions adopted by the judicial conference of Indiana under IC 11-13-1-8.

Indiana Code section 11-13-1-8 reads in relevant part that the board of directors of the judicial conference of Indiana “shall adopt rules consistent with this chapter, prescribing minimum standards concerning: . . . a schedule of progressive probation incentives and violation sanctions, including judicial review procedures[.]” I.C. § 11-13-1-8(b)(5).

[15] We find that the case before us is distinguishable from *Brown*, as nothing within the record before us indicates an oversight by the Probation Department, and Hentgen did not have legitimate reasons that invalidated the alleged violation of probation. To the contrary, Hentgen admitted that he committed the additional offense of possession of a narcotic drug and/or unlawful possession of a syringe, and “[p]roof of any one violation is sufficient to revoke a defendant’s probation.” *Figures v. State*, 920 N.E.2d 267, 273 (Ind. Ct. App. 2010) (quoting *Brooks v. State*, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998), *trans. denied*).

[16] Turning to the trial court’s determination that Hentgen should serve his previously suspended sentence in the DOC, we note that the court examined the “larger picture” – particularly, that Hentgen committed the additional offenses of escape in Howard County and possession of a narcotic drug in Cass County – and found that Hentgen was not a good candidate for probation or a work release program. *Tr.*, Vol. II at 46. Regarding Hentgen’s argument that the trial court should have considered his mental state when it imposed the sanction, it is well settled that consideration of a probationer’s mental health is only required where: 1) the State alleges the probationer has violated probation by committing a new crime, and 2) the probationer’s mental health issues affect the probationer’s degree of culpability with regard to that new crime. *Gaddis v. State*, 177 N.E.3d 1227, 1229 (Ind. Ct. App. 2021) (citations omitted). Hentgen did not connect his new crime to his mental health. As such, the trial court was not required to consider his mental health during the revocation proceeding. As for Hentgen’s arguments that the trial court should have imposed a lesser

sanction because of his years-long battle with addiction and efforts to obtain substance abuse treatment, we note that trial courts are not required to balance aggravating or mitigating circumstances when imposing a sentence in a probation revocation proceeding. *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*.

[17] Hentgen’s arguments amount to requests that this court substitute our judgment for that of the trial court, which we will not do without a showing of abuse of the trial court’s discretion. *See Richardson v. State*, 890 N.E.2d 766, 768 (Ind. Ct. App. 2008) (in review of probation revocation proceedings, we do not reweigh the evidence or judge the credibility of witnesses). Indiana Code section 35-38-2-3(h) provides that if the trial court determines that a person has violated the terms of their probation, the trial court may “[o]rder execution of *all or part* of the sentence that was suspended at the time of initial sentencing.” (Emphasis added.) Hentgen admitted to violating his probation. Thus, pursuant to the clear language of Indiana Code section 35-38-2-3(h), the trial court acted within its discretion in ordering execution of Hentgen’s entire suspended sentence.

Conclusion

[18] We conclude that the trial court did not abuse its discretion in requiring Hentgen to serve his entire previously suspended sentence in the DOC. Therefore, we affirm the trial court’s judgment.

[19] Affirmed.

Mathias, J., and Foley, J., concur.