

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin Lacy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2022

Court of Appeals Case No.
22A-CR-1087

Appeal from the Madison Circuit
Court

The Honorable David A. Happe,
Judge

Trial Court Cause No.
48C04-1089-F3-2496

Bradford, Chief Judge.

Case Summary

[1] In May of 2019, Justin Lacy pled guilty to Level 5 felony domestic battery resulting in serious bodily injury, Level 6 felony strangulation, and Class A misdemeanor interference with the reporting of a crime following an incident with his girlfriend, Jennifer Giselbach. He was sentenced to an aggregate six-year term, with four years executed in the Department of Correction (“DOC”) and two years suspended to probation. While on probation, Lacy again was involved in a domestic incident with Giselbach and was charged with Level 5 felony domestic battery and Class A misdemeanor possession of a controlled substance. The State subsequently filed a petition to revoke Lacy’s probation. Following an evidentiary hearing, the trial court revoked Lacy’s probation and ordered him to serve the entire previously-suspended portion of his sentence in the DOC. We affirm.

Facts and Procedural History

[2] On May 21, 2019, for acts committed against Giselbach, Lacy pled guilty to Level 5 felony domestic battery resulting in serious bodily injury, Level 6 felony strangulation, and Class A misdemeanor interference with the reporting of a crime. On June 18, 2019, the trial court accepted Lacy’s guilty plea and sentenced him to an aggregate six-year sentence, with four years executed to the DOC and two years suspended to supervised probation.

- [3] On February 18, 2022, while Lacy was serving his term of probation, Giselbach came over to Lacy's apartment. Giselbach and Lacy had a child together and had previously been engaged but were not in a relationship or living together at that time. While Giselbach was at Lacy's apartment, she and Lacy got into an argument. Maria Evans, who lived nearby, overheard the argument and called the police after she heard yelling and what sounded like a female choking.
- [4] Elwood Police Officer Nicholas Naselroad was dispatched to the apartment. Upon arriving at the scene, Officer Naselroad could hear what "sounded like a male and female yelling at each other." Tr. Vol. II p. 57. Officer Naselroad first encountered Lacy, who told Officer Naselroad that "he had been arguing with his fiancé[e]." Tr. Vol. II p. 58. Officer Naselroad then encountered Giselbach, who was "very worked up." Tr. Vol. II p. 58. Officer Naselroad observed that Giselbach had a cut above her right eye, a cut on her right forearm, and red marks around her neck that did not "look like hickeys," but rather looked "like something else." Tr. Vol. II p. 59. When asked how she had sustained the injuries, Giselbach told Officer Naselroad that Lacy had pushed her, she had fallen, and she had lost consciousness. Officer Naselroad further observed that "[t]he apartment had broken furniture all over and even some broken glass on the floor." Ex. Vol. p. 5.
- [5] Lacy admitted to Officer Naselroad that he and Giselbach had been arguing and that he had thrown some furniture. Lacy was placed under arrest and, during a subsequent search of his person, Officer Naselroad discovered "a small zip style baggie" with "a broken orange pill inside of it." Tr. Vol. II p. 60.

Lacy informed Officer Naselroad that the pill “was a Suboxone.” Tr. Vol. II p. 60. Officer Naselroad then spoke to Evans, who informed him that prior to contacting the police, she had heard “banging noises coming from [the] apartment,” “glass breaking,” “a male and female yelling at each other,” “a female coughing as if she was being choked,” and the female say “just go on and kill me then” followed by the male saying “I’m going to, I feel like I want to.” Ex. Vol. p. 6.

[6] On February 25, 2022, the State filed a petition to revoke Lacy’s probation, alleging that Lacy had committed the new criminal offenses of Level 5 felony domestic battery and Class A misdemeanor possession of a controlled substance. An evidentiary hearing was held on April 12, 2022. Officer Naselroad testified during the hearing and the probable cause affidavit relating to the new criminal charges was admitted into evidence.¹

[7] Giselbach testified during the evidentiary hearing, recanting many of her earlier statements to Officer Naselroad. Giselbach testified that during her argument with Lacy, she had fallen and had hit her head, after which “stuff [was] a little hazy” to her. Tr. Vol. II p. 53. Giselbach indicated that she did not remember telling Officer Naselroad that Lacy had pushed her and claimed that the red marks that had been on her neck were “hickeys.” Tr. Vol. II p. 54. Giselbach did remember that she had sustained “a little scratch on [her] arm and [her]

¹ Lacy did not object to the admission of the probable cause affidavit.

head” from falling. Tr. Vol. II p. 54. Giselbach also admitted that she had spoken to Lacy after the incident while he was in custody, claiming that he had apologized to her and that she had apologized to him. When asked on cross-examination by defense counsel whether Lacy had “ever put his hands on [her] during [the] incident,” she responded, “No, not that I recall.” Tr. Vol. II p. 55.

[8] Following the presentation of evidence, the trial court found that Lacy had violated the terms of his probation by committing domestic battery and possessing a controlled substance. In finding that Lacy had violated the terms of his probation by committing a new criminal offense, the trial court found Giselbach’s earlier statements to Officer Naselroad to be more credible than her testimony during the evidentiary hearing. The trial court then revoked Lacy’s probation, noting that “what’s concerning here, the elephant in the room, is the fact that [Lacy] already committed this crime against this woman and [was] serving the sentence for that, and [while doing so, he] commit[ted] the same crime against the same woman.” Tr. Vol. II p. 67. For this reason, the trial court ordered Lacy to serve the entire previously-suspended two year sentence in the DOC, stating that “[t]he only reasonable response here is the balance of your time is going to be to the [DOC].” Tr. Vol. II p. 67.

Discussion and Decision

[9] Lacy contends that the trial court abused its discretion in revoking his probation and ordering that he serve the remainder of his previously-suspended sentence.

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007) (internal citations omitted).

[10] “Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation.” *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008).

If the 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 impose one (1) or more of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h).

A. Sufficiency of the Evidence to Prove Violation

- [11] Lacy argues that the State failed to sufficiently prove that he had violated the terms of his probation. “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). “In reviewing the sufficiency of the evidence, we use the same standard as in any other sufficiency question.” *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). “When the appellant challenges the sufficiency of the factual basis for revocation, we neither reweigh the evidence nor judge the credibility of the witnesses.” *Id.* “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.” *Cox*, 706 N.E.2d at 551. “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.*
- [12] In proving that Lacy violated the terms of his probation by committing a new criminal offense, the State did not have to show that he was convicted of a new crime. *Lamplery v. State*, 31 N.E.3d 1034, 1037 (Ind. Ct. App. 2015). Rather, the State need only demonstrate the commission of a new crime “by a preponderance of the evidence.” *Id.* The evidence submitted during the probation revocation hearing sufficiently meets this burden.

[13] Officer Naselroad testified during the fact-finding hearing, stating that when he arrived at the scene, he could hear what “sounded like a male and female yelling at each other.” Tr. Vol. II p. 57. Officer Naselroad first encountered Lacy, who told Officer Naselroad that “he had been arguing with his fiancé[e].” Tr. Vol. II p. 58. Officer Naselroad then encountered Giselbach, who was “very worked up.” Tr. Vol. II p. 58. Officer Naselroad observed that Giselbach had a cut above her right eye, a cut on her right forearm, and red marks around her neck that did not “look like hickeys,” but rather looked “like something else.” Tr. Vol. II p. 59. When asked how she had sustained the injuries, Giselbach told Officer Naselroad that Lacy had pushed her, that she had fallen, and that she had lost consciousness.

[14] In addition, the probable cause affidavit outlining the facts that led to the domestic battery and possession charges was admitted into evidence. The probable cause affidavit established the factual basis for the criminal charges and contained statements from Giselbach, Lacy, and Evans, as well as observations made by Officer Naselroad. The probable cause affidavit indicated that when Officer Naselroad had spoken with Giselbach at the time of the incident, Giselbach had been “very upset.” Ex. Vol. p. 5. Giselbach had told Officer Naselroad that Lacy had pushed her, she had fallen and hit her head, and had lost consciousness “a couple of times.” Ex. Vol. p. 5. Officer Naselroad had observed that Giselbach “had a cut over her right eye and a cut on her right forearm” and her “neck had red marks all around it.” Ex. Vol. p. 5. Officer Naselroad had further observed that “[t]he apartment had broken

furniture all over and even some broken glass on the floor.” Ex. Vol. p. 5. Evans had informed Officer Naselroad that prior to contacting the police, she had heard “banging noises coming from [the] apartment,” “glass breaking,” “a male and female yelling at each other,” “a female coughing as if she was being choked,” and the female say “just go on and kill me then” followed by the male saying “I’m going to, I feel like I want to.” Ex. Vol. p. 6. Lacy had admitted to Officer Naselroad that he and Giselbach had been arguing and that he had thrown some furniture. Lacy was placed under arrest and, during a subsequent search of his person, Officer Naselroad had discovered “a broken orange pill,” which Lacy identified as “suboxone.” Ex. Vol. p. 5.

[15] Giselbach testified during the evidentiary hearing and recanted many of her prior statements. However, in finding that Lacy had violated the terms of his probation by committing a new criminal offense, the trial court found Giselbach’s earlier statements to Officer Naselroad to be more credible than her testimony during the evidentiary hearing. Specifically, the trial court noted that

Although Ms. Giselbach is recanting in court, there are two (2) sets of statements from her. One, the recantation in court, which was fairly generic and is (indiscernible) by a motive to fabricate, and that she has, um, had contact with the defendant while he’s been incarcerated. And, uh, in broad terms I’m going say that she is, uh, attempting to salvage that relationship. Uh, the statement that was given at the time was close to contemporaneous, it’s corroborated by observations made by other civilian witnesses that are reflected in the probable cause affidavit, and it was a detailed statement that was given by [Giselbach] where she displayed a detailed knowledge and reconciliation of the events that had happened that night. So the

prior statements are given much more weight than those in court, and that's why the court finds a violation despite her recantation today.

Tr. Vol. II pp. 63–64. The trial court, acting as the trier-of-fact, “is best positioned to judge the credibility of these witnesses, is free to credit or discredit testimony, and weigh conflicting evidence.” *Tharp v. State*, 942 N.E.2d 814, 816 (Ind. 2011). In challenging the trial court’s decision, Lacy argues that “Giselbach’s in court testimony should be given greater consideration.” Appellant’s Br. p. 10. This argument, however, amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See Cox*, 706 N.E.2d at 551 (“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.”). Given the totality of the facts and circumstances, we cannot say that the trial court abused its discretion in finding that the State satisfied its burden of proving, by a preponderance of the evidence, that Lacy had violated the terms of his probation by committing new criminal acts.

B. Revocation of Placement on Probation

[16] Lacy also argues that the trial court abused its discretion by fully revoking his probation. In making this argument, Lacy asserts that the mere possession of one broken suboxone pill did not warrant a full revocation. For its part, the State argues that

[m]uch of [Lacy's] argument as to sanction is premised on [his] previous argument that the finding of violation for domestic battery was an abuse of discretion and thus should not be considered as to sanction. Because that finding was proper and supports the sanction imposed, the trial court did not abuse its discretion in sending [Lacy] to the [DOC].

Appellee's Br. p. 13. We agree with the State.

[17] Again, if the court finds that the person has violated a condition of probation, 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). Violation of a single condition “is sufficient to revoke placement.” *Treece v. State*, 10 N.E.3d 52, 60 (Ind. Ct. App. 2014), *trans. denied*. In revoking Lacy's probation and ordering that he serve the entire portion in the DOC, the trial court found that Lacy had violated the terms of his probation by committing two new criminal offenses. Lacy's commission of these new criminal offenses is sufficient to warrant the revocation of his probation. The trial court, therefore, did not abuse its discretion in this regard.

[18] The judgment of the trial court is affirmed.

May, J., and Pyle, J., concur.