

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Harley Perkins,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 29, 2024

Court of Appeals Case No.
23A-CR-2327

Appeal from the Madison Circuit Court

The Honorable Mark Dudley, Judge

Trial Court Cause Nos.
48C06-1711-F6-2898
48C06-2206-F6-1802

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Harley Perkins appeals the revocation of his probation and sanction. We affirm.

Facts and Procedural History

- [2] On November 27, 2017, the State charged Perkins with failure to return to lawful detention as a level 6 felony under cause number 48C06-1711-F6-2898 (“Cause No. 2898”). Perkins pled guilty as charged pursuant to a plea agreement. The court sentenced him to two years of probation. On November 29, 2021, the Probation Department filed a notice of probation violation in Cause No. 2898 alleging that he violated the terms of his probation by committing possession of paraphernalia and operating a motor vehicle without ever being licensed, both as class C misdemeanors. It also alleged that Perkins admitted to using methamphetamine, THC, and alcohol while on probation. The court held an evidentiary hearing in January 2022, during which Perkins admitted to the alleged violations. The court imposed no sanction for the violations.
- [3] On June 22, 2022, the State charged Perkins with unlawful possession of a syringe as a level 6 felony, resisting law enforcement as a class A misdemeanor, possession of marijuana as a class B misdemeanor, public nudity as a class B misdemeanor, and possession of paraphernalia as a class C misdemeanor in cause number 48C06-2206-F6-1802 (“Cause No. 1802”). On July 6, 2022, the Probation Department filed a second notice of probation violation in Cause No.

2898 alleging that Perkins violated the terms of his probation by committing the offenses alleged in Cause No. 1802. It also alleged that Perkins admitted to using methamphetamine and marijuana while on probation. The court held an evidentiary hearing in July 2022, during which Perkins admitted to the alleged violations. The court imposed no sanction for the violations.

[4] In March 2023, Perkins entered into a plea agreement with the State in Cause No. 1802 in which he agreed to plead guilty to resisting law enforcement, possession of marijuana, possession of paraphernalia, and public nudity, in exchange for dismissal of the felony count and an agreed sentence of one year suspended to probation. On July 18, 2023, the Probation Department filed a notice of probation violation in both Cause No. 2898 and Cause No. 1802 alleging that Perkins violated the terms of both probationary sentences by committing theft as a level 6 felony and testing positive for methamphetamine and THC. The court held an evidentiary hearing on September 1, 2023. The court found that the State met its burden of proof that Perkins violated the terms of his probationary sentences by committing a new crime. As a sanction for his violation in Cause No. 2898, the court revoked Perkins's probation and ordered him to serve the balance of his previously suspended two-year sentence on home detention. As a sanction for his violation in Cause No. 1802, the court revoked Perkins's probation and ordered him to serve the balance of his previously suspended one-year sentence on home detention.

Discussion

- [5] Perkins argues that the trial court abused its discretion in ordering him to serve the balance of his previously suspended sentences on home detention. Ind. Code § 35-38-2-3(h) provides:

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.

- [6] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained that, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that, “[i]f 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.” *Prewitt*, 878 N.E.2d at 188. When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not

reweigh the evidence or judge the credibility of the witnesses. *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans. denied*. As long as the proper procedures have been followed in conducting a probation revocation hearing, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence. *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

[7] The record reveals that Perkins violated his probation by committing theft. Looking at his probation violation history, he has continually used prohibited and/or illegal substances, and he has committed numerous criminal offenses while under the court's supervision. In light of the record, we cannot say the trial court abused its discretion.

[8] For the foregoing reasons, we affirm the trial court's order.

[9] Affirmed.

Riley, J., and Foley, J., concur.

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