

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Scott DeVries
DeVries + Kelly Law Office
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Christopher Michael Lee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 15, 2021

Court of Appeals Case No.
21A-CR-312

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

The Honorable Stanley E. Kroh,
Magistrate

Trial Court Cause No.
49D29-1709-F3-35942

Mathias, Judge.

[1] Christopher Michael Lee appeals the Marion Superior Court’s revocation of his probation, arguing that the evidence presented at his revocation hearing was insufficient to prove he violated a condition of his probation. Because Lee’s claim amounts to a request that we reweigh the evidence, which we will not do, we affirm.

Facts and Procedural History

[2] In 2016, Lee pleaded guilty to Level 3 felony conspiracy to commit robbery. The trial court ordered him to serve a seven-year sentence, with three years executed on community corrections and four years suspended to probation. When Lee later violated his community corrections placement, the court ordered that Lee serve his probation under strict compliance. The terms of Lee’s probation, which began in March 2020, required that he “not possess a firearm, destructive device, or other dangerous weapon or live in a residence where there are such items.” Appellant’s App. p. 60.

[3] While on probation, Lee lived at the home of his long-time girlfriend, Tia Axson. Tr. p. 57. Axson kept an AR-15 and a Glock 26 in her home, and both firearms were registered in her name. In October 2020, an altercation between Lee and Axson provoked Axson to call 911. Indianapolis Metropolitan Police Department Officer Ryan Breeden was dispatched to Axson’s home, and Axson reported that Lee had stolen the AR-15 and the Glock 26, as well as her cell phone.

[4] About one month later, Lee and Axson had another argument. This time, Axson contacted Lee's probation officer and reported that Lee pointed the AR-15 at her and the couple's four-year-old daughter. So, law enforcement arrested Lee, and the State filed a notice of probation violation alleging that Lee possessed a firearm in violation of the conditions of his probation.¹

[5] On February 12, 2021, the trial court held a probation revocation hearing. During the hearing, Officer Breeden recounted the conversation he had with Axson at her home and noted that she seemed shaken up. Probation court officer Michael Wolka explained that Axson had informed Lee's probation officer in a text message and during a phone call that Lee possessed a firearm, and that the probation officer documented that information in the probation department's internal case management system.

[6] Axson also testified. She maintained that she had made false reports to Officer Breeden and the probation officer, and that the information she had provided them "was not true." *Id.* at 47. Specifically, she stated that she had made those reports "because of frustration." *Id.* at 44. Her arguments with Lee had motivated her "to get revenge," and the only way to do that would be to "get him in—into the system." *Id.* She further explained her subsequent realization that "the most important person [she] was hurting" by reporting Lee to

¹ The State's notice of probation violation also alleged that Lee failed to refrain from using illegal substances and failed to maintain a single, verifiable address. However, because the State ultimately conceded that Lee lived with Axson, and because the trial court did not base its ultimate decision on Lee's alleged drug use, we address only the firearm allegation.

authorities “was [the couple’s] four-year-old,” *id.* at 48, and that their daughter “needs her daddy,” *id.* at 51.

[7] The trial court ultimately found that Lee violated the terms of his probation by possessing a firearm. In turn, the court revoked Lee’s probation and ordered him to serve the previously suspended four years of his sentence in the Department of Correction.

[8] Lee now appeals.

Discussion and Decision

[9] In reviewing a trial court’s decision to revoke probation, we keep in mind that probation is a matter of grace, not a right to which a criminal defendant is entitled. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Trial courts retain discretion to grant probation, to determine the conditions of a defendant’s probation, and to revoke probation if those conditions are violated. *Mateyko v. State*, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), *trans. denied*. Accordingly, we review a trial court’s decision to revoke probation for an abuse of discretion. *Id.* We consider only the evidence most favorable to the judgment, and we do not reweigh the evidence or judge the credibility of the witnesses. *Id.* A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances, or if the trial court misinterprets the law. *Killbrew v. State*, 165 N.E.3d 578, 581–82 (Ind. Ct. App. 2021) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)).

[10] Here, Lee claims the trial court abused its discretion in revoking his probation because the State did not present sufficient evidence to prove that he possessed a firearm. Viewing the evidence in the light most favorable to the trial court's decision, we do not agree.

[11] Probation revocation is a two-step process: a trial court must first determine whether a violation occurred and then whether the violation warrants revocation. *Sullivan v. State*, 56 N.E.3d 1157, 1160 (Ind. Ct. App. 2016). Because probation revocation hearings are civil in nature, the State need only prove an alleged violation of probation by a preponderance of the evidence. *Wilkerson v. State*, 918 N.E.2d 458, 461 (Ind. Ct. App. 2009). Moreover, courts may consider any relevant evidence, including reliable hearsay, so long as the evidence bears some substantial indicia of reliability. *Mateyko*, 901 N.E.2d at 557.

[12] The terms of Lee's probation, which he was ordered to serve under strict compliance, prohibited him from possessing a firearm or living in a place where firearms are kept. The evidence demonstrated that Lee lived with Axson, who owned two firearms, while he was on probation. Moreover, Axson reported to law enforcement that Lee stole both her AR-15 and her Glock 26, and she reported to Lee's probation officer that Lee pointed the AR-15 at her and the couple's daughter. At the probation revocation hearing, both Officer Breeden and probation court officer Michael Wolka affirmed that Axson had made those reports. And, despite the discrepancy between Axson's reports and her

testimony at the hearing, the trial court found the former to be “more credible.”
Tr. p. 60.

[13] Although Lee now argues that “Axson’s sworn testimony that she lied to Officer Breeden and probation renders their testimony regarding her statements unreliable,” Appellant’s Br. at 12, this argument amounts to a request that we reassess the credibility of the witnesses and reweigh the evidence, which we will not do. Accordingly, under these unique facts and circumstances, we cannot say the trial court abused its discretion in determining that Lee possessed a firearm in violation of the conditions of his probation.

Conclusion

[14] For all of these reasons, we conclude that the trial court did not abuse its discretion in revoking Lee’s probation.

[15] Affirmed.

Tavitas, J., and Weissmann, J., concur.