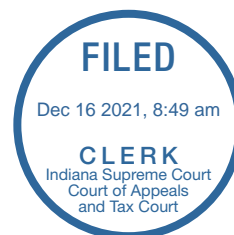


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Donna Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 16, 2021

Court of Appeals Case No.
21A-CR-1319

Appeal from the Posey Circuit
Court

The Honorable Craig S. Goedde,
Judge

Trial Court Cause No.
65C01-1909-F6-445

Bailey, Judge.

Case Summary

[1] Donna Jones (“Jones”) appeals from the order in which the trial court revoked her probation and ordered Jones to serve the balance of her suspended sentence in the Posey County Jail (the “PCJ”). Jones raises two issues, which we restate as (1) whether she was adequately advised about the potential consequences of the revocation proceedings, consistent with principles of due process; and (2) whether the court abused its discretion in revoking probation and ordering Jones to serve her entire sentence in the PCJ when the evidence shows that she violated the conditions of her probation by submitting positive drug screens.

[2] We affirm.

Facts and Procedural History

[3] In 2019, Jones pleaded guilty to two counts.¹ The trial court imposed concurrent one-year sentences to be served in the PCJ, with the time suspended to probation. Among the conditions of probation was that Jones was not to “possess or consume any . . . narcotic, synthetic marijuana, or controlled substance unless prescribed by a physician or dentist.” App. Vol. 2 at 19. Jones was to participate in drug screens upon the request of the probation department.

¹ These were Level 6 felony counts for Unlawful Possession of a Syringe, Ind. Code §§ 35-52-16-88.7, 16-42-19-18, and Possession of a Narcotic Drug, I.C. § 35-48-4-6(a).

[4] In May 2020, the probation department petitioned to revoke Jones’s probation alleging that, among other things, Jones tested positive for heroin, morphine, THC, fentanyl, and methamphetamine. The probation department sought the revocation of probation and ultimately recommended that Jones be ordered to “serve six months executed.” App. Vol. 2 at 28. At an initial hearing, the court explained to Jones that there is “a wide variety of ranges [*sic*] that the Court has the ability to do” upon the petition to revoke, including “order[ing] [her] to execute the entire balance” of the sentence. Tr. Vol. 2 at 13. The trial court reiterated that “the worst[-]case scenario” for Jones was that “the Court would have the ability to revoke the entire suspended portion of [her] sentence and order [Jones] to execute that there at the [PCJ].” *Id.* At the hearing, there were also references to the recommendation in the petition, which was for Jones to “serve six (6) months” in the PCJ, which would amount to “three (3) months because you’re going to get day for day credit[.]” *Id.* at 14. The State said it would agree with probation’s recommendation “if [Jones] were to admit.” *Id.*

[5] The matter proceeded to a fact-finding hearing. At the outset of the hearing, the trial court mentioned that the probation department “is recommending that your suspended sentence be revoked and that you be ordered to serve six (6) months executed, and be terminated from probation unsuccessfully.” *Id.* at 22. Before fact-finding began, the State noted that defense counsel “wanted to clarify something with his client[.]” *Id.* at 24. Counsel then spoke with Jones:

[Defense Counsel]: Okay. What I want to make sure that you understand is that . . . you have been sentenced to, one (1) year,

which has been suspended to doing probation. If we proceed with a contested hearing today and your sentence is revoked, the Judge could order you to do one (1) year, which would actually be six (6) months of actual time. Based on this Petition, what **the State is recommending** would be instead that you be sentenced to six (6) months, and you would only do three (3) months of actual time. It's my understanding you have approximately forty (40) days of credit time already. Do you understand? Don't ask me any questions, but do you understand that?

[Jones]: Yes, sir.

[Defense Counsel]: All right. So, in light of that are you wanting to proceed with today's hearing and contest the allegations in the Petition to Revoke or are you wanting to proceed with the recommendation in paragraph (4) [of the Petition to Revoke]?

[Jones]: I honestly would really like to have a second chance with Probation.

[Defense Counsel]: All right. So, we will go ahead and move forward today. So, it's your request today to proceed with the hearing and ask for additional time in Probation?

[Jones]: Yes, sir.

Id. at 24-25 (emphasis added).

[6] The State then called a witness from the probation department, who testified that—among other things—while Jones was on probation, she tested positive for heroin, morphine, THC, fentanyl, and methamphetamine. In its closing argument, the State recommended that the court revoke probation and order

Jones to “serve the entire year” in the PCJ. *Id.* at 37. The court ultimately revoked Jones’s probation and ordered Jones to serve one year in the PCJ.

[7] Jones now appeals.

Discussion and Decision

Adequacy of Advisements

[8] Jones contends that she received inadequate advisements about the potential consequences of the revocation proceedings. As to the advisements, Jones argues that there were conflicting advisements about the recommendation on the petition. Jones asserts that the court “advised [her] that the **State** was requesting 6 months, and then [the court] sentenced [her] to serve twelve (12) months.” Br. of Appellant at 19 (emphasis added). Jones notes that it was the probation department, rather than the State, that recommended six months of executed time in the petition. Jones asserts that the trial court “failed to follow the recommendation of the Probation Department, and, instead ordered [Jones] to serve twelve . . . months [of] executed time.” *Id.* at 15. According to Jones, the court’s “advisement was in error and was confusing.” *Id.* at 19. Jones acknowledges that she subsequently received an advisement from counsel. Yet, she contends that counsel’s advisement conflicted with that of the trial court, and she “relied on the [court’s] advisement that . . . implied that she would be sentenced to six months at the [S]tate’s recommendation.” *Id.* Ultimately, Jones argues that the advisements were so inadequate that she was deprived of due process. She argues that “it is impossible to know whether [she] would

have made the same decision had she understood the potential outcome of rejecting the State’s recommendation and proceeding to hearing.” *Id.*

[9] The crux of Jones’s argument is that she was improperly left with the impression that the trial court would order—at most—six months of executed time in the PCJ. Yet, just before the fact-finding began, defense counsel reviewed the potential consequences with Jones, explaining that, although there was a recommendation for six months executed, “[i]f we proceed with a contested hearing today and your sentence is revoked, the Judge could order you to do one (1) year, which would actually be six (6) months of actual time.” Tr. Vol. 2 at 24. Jones confirmed that she understood the consequences. Jones then chose to proceed with fact-finding, ultimately hoping that the trial court would be lenient and allow her to remain on probation with no executed time.

[10] Under the circumstances, we cannot say that Jones received an inadequate advisement about the potential consequences of the revocation proceeding. Thus, even assuming *arguendo* that due process requires an adequate advisement in revocation matters, Jones has not shown her entitlement to appellate relief.

Abuse of Discretion

Sufficiency of the Evidence

[11] The trial court “may revoke a person’s probation if . . . the person has violated a condition of probation during the probationary period” and the State files a “petition to revoke probation . . . during the probationary period[.]” Ind. Code § 35-38-2-3(a). Generally, to prevail on a petition to revoke probation, the State

must prove “by a preponderance of the evidence” that the defendant violated a condition of probation. I.C. § 35-38-2-3(f). A preponderance of the evidence means the “greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force.” *Galloway v. State*, 938 N.E.2d 699, 708 n.7 (Ind. 2010) (quoting *Black’s Law Dictionary* 1301 (9th ed. 2009)).

[12] “A trial court’s probation decision is subject to review for abuse of discretion.” *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). The trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances. *Id.* In reviewing for an abuse of discretion, we will not reweigh evidence. *See 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.*

[13] In challenging the sufficiency of the evidence, Jones focuses on whether the State proved allegations about her participation in treatment. Jones essentially minimizes the effect of testimony that she had submitted positive drug screens. Yet, the State need not prove all allegations in the petition to revoke. *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Rather, the trial court may properly revoke “probation . . . on evidence of violation of a single condition[.]” *Id.* Thus, because there is evidence showing that Jones submitted positive drug screens in violation of the conditions of her probation, we conclude that the trial court did not abuse its discretion in revoking probation.

Consequence Imposed

[14] Jones challenges the consequence imposed for her violation, a matter we review for an abuse of discretion. *See id.* at 616. As to the court's discretion, Indiana Code Section 35-38-2-3(h) provides that, when the court identifies a violation of the conditions of probation, the court may take one of these three actions:

(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.

I.C. § 35-38-2-3(h). Here, the court selected the third option, ordering Jones to serve the balance of her suspended sentence in the PCJ. Jones argues that the trial court should have selected a less-severe option. Yet the trial court selected a permissible option. Thus, the trial court did not abuse its discretion.

Conclusion

[15] Jones was adequately advised about the consequences of the proceedings, so she has not established a deprivation of due process stemming from inadequate advisements. Nor did the trial court abuse its discretion in revoking probation and ordering Jones to serve her sentence in the PCJ.

[16] Mathias, J., and Altice, J., concur.