

MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Troy Lamar Jenkins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 19, 2022

Court of Appeals Case No.
22A-CR-271

Appeal from the
Marion Superior Court

The Honorable
Shatrese M. Flowers, Judge

The Honorable
James K. Snyder, Magistrate

Trial Court Case Nos.
49G02-0808-FA-192218
49D28-2007-F4-23815

Friedlander, Senior Judge.

- [1] Troy Lamar Jenkins appeals his conviction of unlawful possession of a firearm by a serious violent felon, and the revocation of his probation and sanction imposed. Concluding that the State’s evidence was sufficient and that the court did not abuse its discretion in revoking Jenkins’ probation or imposing the sanction of his entire suspended sentence, we affirm.
- [2] In 2009, Jenkins pleaded guilty to voluntary manslaughter as a Class A felony in cause number 49G02-0808-FA-192218 (FA-192218) for stabbing a woman to death. Following service of his sentence, he was placed on probation on November 29, 2018.
- [3] In July 2020, Jeff Muszar, a captain with the Indianapolis Fire Department, was leaving Methodist Hospital when he observed a truck pull up to the emergency room doors. Several people exited the truck, and Captain Muszar saw a man and woman assist another man into the emergency room while the driver, later identified as Jenkins, remained in the truck. Captain Muszar heard someone yell, “he’s been shot.” Tr. Vol. 3, p. 118. Once the injured person was in the emergency department, Captain Muszar “heard a comment made about getting out of here now.” *Id.* at 112. Jenkins drove away, and Captain Muszar called 911 and followed him.
- [4] Officer Michael Roach of the Indianapolis Metropolitan Police Department received the dispatch concerning a vehicle that had dropped off a person who had been shot. Officer Roach located the vehicle, pulled Jenkins over, and instructed him to exit the truck. Officer Ethan Carr arrived to assist and found

a handgun on the floorboard of the driver's side. The officers determined that the truck was registered to Jenkins, and they confirmed that Jenkins had neither a valid driver's license nor a gun permit.

[5] Jenkins was charged under cause number 49D28-2007-F4-23815 (F4-23815) with unlawful possession of a firearm by a serious violent felon, a Level 4 felony.¹ In addition, the probation department filed a notice of violation in FA-192218 alleging that Jenkins had violated his probation by committing a new criminal offense.

[6] A bifurcated trial was held on the firearm charge. In phase one, a jury found Jenkins guilty of unlawfully possessing a firearm, and in phase two, Jenkins pleaded guilty to being a serious violent felon. For that conviction, he was sentenced to eight years consecutive to the sanction imposed in FA-192218. Jenkins was also found to have violated his probation in FA-192218, and for that transgression, the court revoked his probation and ordered him to serve the entirety of his fifteen-year suspended sentence. Jenkins now appeals in this consolidated appeal.

[7] Jenkins first contends the State's evidence was insufficient to support his firearm conviction. When we review a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sandleben v. State*, 29 N.E.3d 126 (Ind. Ct. App. 2015), *trans. denied*.

¹ Ind. Code § 35-47-4-5 (2020).

Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501 (Ind. Ct. App. 2015).

[8] To convict Jenkins of unlawful possession of a firearm by a serious violent felon, the State had to prove beyond a reasonable doubt that Jenkins, a serious violent felon, knowingly or intentionally possessed a firearm. *See* Ind. Code § 35-47-4-5. Jenkins challenges the evidence of possession.

[9] A conviction for possession of a firearm may rest upon proof of either actual or constructive possession. *Smith v. State*, 113 N.E.3d 1266 (Ind. Ct. App. 2018), *trans. denied* (2019). Actual possession occurs when a defendant has direct physical control over an item. *Griffin v. State*, 945 N.E.2d 781 (Ind. Ct. App. 2011). Here, because Jenkins did not have direct physical control over the handgun, the question is whether he constructively possessed it. Constructive possession of items found in an automobile may be imputed to the driver of the vehicle. *State v. Emry*, 753 N.E.2d 19 (Ind. Ct. App. 2001). Although our review could end here, we nonetheless proceed to examine the evidence in this case as it pertains to possession of the handgun.

[10] Constructive possession requires proof that a person has both (1) the capability and (2) the intent to maintain dominion and control over the item. *Causey v. State*, 808 N.E.2d 139 (Ind. Ct. App. 2004). To establish the capability element,

the State must demonstrate the defendant was able to reduce the contraband to his personal possession. *Wilson v. State*, 966 N.E.2d 1259 (Ind. Ct. App. 2012), *trans. denied*. Proof of a possessory interest in the premises in which the item is found is adequate to satisfy the capability element. *Goliday v. State*, 708 N.E.2d 4 (Ind. 1999). Here, as the driver and sole occupant when police stopped him, Jenkins had exclusive possession of the truck. Such possession is sufficient to show his ability to control the handgun. *See id.* (holding that defendant had exclusive possession of vehicle when he was only person in car at time he was stopped). Further, although the issue is possession not ownership, the officers confirmed that the truck was registered to Jenkins. Moreover, the handgun was on the driver's side floorboard easily within Jenkins' reach as the driver of the truck. Thus, Jenkins had the ability to reduce the handgun to his personal possession. *See Lampkins v. State*, 682 N.E.2d 1268 (Ind. 1997) (concluding capability element was established because contraband was within reach of defendant), *modified on reh'g*, 685 N.E.2d 698.

[11] To satisfy the intent element, the State must demonstrate the defendant's knowledge of the presence of the item. *Grim v. State*, 797 N.E.2d 825 (Ind. Ct. App. 2003). Such knowledge may be inferred from the exclusive control over the premises containing the item. *Goliday*, 708 N.E.2d 4. If control of the premises is non-exclusive, the inference of intent must be supported by additional circumstances indicating the defendant's knowledge of the presence of the item. *Cannon v. State*, 99 N.E.3d 274 (Ind. Ct. App. 2018), *trans. denied*. These additional circumstances have been found to include: (1) incriminating

statements by the defendant; (2) attempted flight or furtive gestures; (3) location of substances like drugs in settings that suggest manufacturing; (4) proximity of the item to the defendant; (5) location of the item within the defendant's plain view; and (6) mingling of the item with other items owned by the defendant. *Id.*

[12] Jenkins suggests the handgun was left behind by one of the individuals he dropped off at the hospital and therefore his possession of the truck was not exclusive. This alternate explanation is merely an invitation to reweigh the evidence, which we cannot do. *See Sandleben*, 29 N.E.3d 126. Jenkins' sole occupancy and exclusive possession of the truck at the time police stopped him was sufficient to raise a reasonable inference of intent. *See id.*; *see also Goliday*, 708 N.E.2d 4 (holding that defendant's exclusive possession of vehicle was adequate to raise reasonable inference of intent where, although he was in borrowed car, he was only person in car at time he was stopped).

[13] Assuming, *arguendo*, this was a case of non-exclusive control of the premises where contraband was found, the State provided evidence of additional circumstances that would support the inference of Jenkins' knowledge of the handgun. The evidence showed, and Jenkins concedes, that the handgun could be seen from the driver's seat. *See Tr. Vol. 3*, pp. 137, 163-64; *see also Appellant's Br.* p. 14. Thus, not only was the handgun easily within Jenkins' reach, but also it was within Jenkins' view.

[14] The evidence is sufficient to support the jury's conclusion that Jenkins had constructive possession of the handgun.

[15] Next, Jenkins alleges (1) that his probation should not have been revoked and (2) that his violations do not warrant the imposition of his entire suspended sentence. The first part of Jenkins' allegations of error is based on the assumption that his firearm conviction is reversed. Given that we are upholding his conviction, this issue is rendered moot, and we move on to the second part of his claim.

[16] Probation is a criminal sanction that allows a convicted defendant to agree to certain conditions on his behavior in lieu of imprisonment. *Bratcher v. State*, 999 N.E.2d 864 (Ind. Ct. App. 2013), *trans. denied* (2014). "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." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). When the court finds a probationer has violated a condition of probation, one sanction it may impose is the execution of all or part of the sentence that was suspended at the time of initial sentencing. *Brandenburg v. State*, 992 N.E.2d 951 (Ind. Ct. App. 2013), *trans. denied*; Ind. Code § 35-38-2-3(h)(3) (2015). A court's sentencing decisions for such violations are reviewed for an abuse of discretion. *Wilkerson v. State*, 918 N.E.2d 458 (Ind. Ct. App. 2009). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[17] Even before he committed the firearm offense, Jenkins was the subject of several notices of probation violation. He was on probation for a violent offense, voluntary manslaughter, and he had not yet completed one year of probation before a notice of violation was filed. Between October 21, 2019 and

June 26, 2020, the probation department filed four notices of violation alleging that Jenkins tested positive for illegal drugs, failed to comply with court ordered substance abuse evaluation and treatment, failed to submit to drug screens, and failed to report to probation. Appellant's App. Vol. III Confid., pp. 198, 206, 210, 214, 222, 227, 232, 240, 247. At sentencing, Jenkins admitted to the violations of using illegal drugs and failing to comply with substance abuse evaluation. The court highlighted Jenkins' numerous incidents of misconduct while in prison, dishonesty during the probation interview process for the presentence investigation report, ten adult arrests in addition to the voluntary manslaughter and firearm convictions, and commission of perjury during his jury trial on the firearm charge. The court then determined that Jenkins should serve the entirety of his previously suspended sentence of fifteen years.

[18] Jenkins has demonstrated his unwillingness to accept limits on his behavior—both in prison and on probation in lieu of imprisonment. Accordingly, we cannot say the court's decision that Jenkins serve his entire previously suspended sentence is clearly against the logic and effect of the facts and circumstances of this case.

[19] Based on the foregoing, we conclude that the State's evidence was sufficient to support Jenkins' conviction of possession of a firearm by a serious violent felon and that the court did not abuse its discretion in revoking Jenkins' probation or imposing the sanction of his entire suspended sentence.

[20] Judgment affirmed.

Bradford, C.J., and Brown, J., concur.