

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Morelock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 30, 2023

Court of Appeals Case No.
23A-CR-365

Appeal from the Madison Circuit
Court

The Honorable Mark Dudley,
Judge

Trial Court Cause Nos.
48C06-1703-F4-684
48C06-1703-F6-692

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

- [1] On appeal from an order revoking two years of probation, Michael Morelock challenges the sufficiency of the evidence to support three of nine probation violations. He also contests the sanction requiring him to serve the entirety of his previously suspended two-year sentence in the Indiana Department of Correction (DOC). We affirm.

Facts and Procedural History

- [2] In March 2017, the State charged Morelock with level 4 felony dealing in methamphetamine and class B misdemeanor possession of marijuana. In addition, the State filed a notice to seek a habitual offender enhancement.¹ Morelock agreed to plead guilty to the dealing and possession charges as well as to separate charges of theft of a firearm and possession of methamphetamine, both level 6 felonies. The State agreed to a six-year cap on the “aggregate executed portion” of his sentence. Appellant’s App. Vol. 2 at 44. Morelock requested and was granted an evaluation for participation in drug court. In October 2017, the trial court accepted the plea agreement and ordered an eight-year sentence with six years executed and two years of probation. However, the court ordered the “sentence imposed in this cause stayed pending [Morelock’s] successful completion of Drug Court” and specified that if Morelock was

¹ A 2017 presentence investigation report reveals that Morelock “first came in contact with the criminal justice system” as an adolescent and has a felony adjudication for auto theft. Appellant’s App. Vol. 2 at 52. The 2017 report further noted that Morelock had three prior felony convictions, had been on probation, and had his probation revoked to the DOC. *Id.*

removed from the drug court program for any reason, the stay would be “lifted and the sentence shall be executed” at the DOC. *Id.* at 80. The court set out standard and special terms of probation.

[3] By November 2017, Morelock had “absconded” from the drug court program. *Id.* at 95. In February 2018, the trial court found that Morelock was “no longer eligible” to participate in the drug court program, lifted the stay, and ordered that he serve his six-year sentence in the DOC. *Id.* at 98.

[4] In May 2022, the State filed a probation violation notice.² After various amendments, the notice included the following nine alleged violations:

a) Failed to abstain from the use of alcoholic beverages/illicit drugs during the period of Probation: On/about 02/24/22, you submitted a urine specimen to the Madison County Circuit Courts Adult Probation Department, which tested positive for the presence of Methamphetamine and Cannabinoids;

b) Failed to abstain from the use of alcoholic beverages/illicit drugs during the period of Probation: Or/about 03/23/22, you submitted a urine specimen to the Madison County Circuit Courts Adult Probation Department, which tested positive for the presence of Methamphetamine and Cannabinoids;

c) Failed to maintain employment and/or verify employment to the Probation Department;

² The record is unclear as to when Morelock was released from custody, but the parties do not dispute that he was on probation when he is alleged to have committed the violations.

d) On/about 05/02/22, you failed to submit to a urine drug screen;

e) Failed to keep Probation Department informed of address;

f) Failed to report to the Probation Department as instructed (Last reported on 05/02/22. Failed to report for scheduled appointment on 06/08/22);

g) On/about September of 2021-May of 2022 you committed the following new offense: Compulsory School Attendance Violation as filed in Circuit Court VI under Cause Number 48C06-2210-CM-002884;

h) On/about 10/28/22 you committed the following new offense: Unlawful Possession of a Firearm by a Serious Violent Felon as filed in Circuit Court VI under Cause Number 48C06-2210-F4-003107;

i) On/about 10/19/22 you committed the following new offense: Ct. I: Robbery, Level 3 Felony, Ct. II: Battery by Means of a Deadly Weapon, Level 5 Felony, Ct. III: Auto Theft, Level 6 Felony, Ct. IV: Theft, Class A Misdemeanor, Ct. V: Theft, Class A Misdemeanor as filed in Circuit Court VI under Cause Number 48C06-2211-F3-003129[.]

Id. at 132.

[5] Later, Morelock would admit to the alleged violations a, b, c, d, e, and f, but deny those in the final three paragraphs. Hence, we recite only evidence concerning the allegations outlined in g, h, and i. Specifically, we consider, without regard to weight or credibility, the following evidence most favorable to

a finding that Morelock committed the violations noted in paragraphs g, i, and h.³

[6] Morelock's child missed twenty-three days of school during the school year that ended in the spring of 2022. Morelock was a custodial parent and point of contact for the school. Although the school sent letters/messages to his last known address, phone number, and email address, it received no response. An investigator visited Morelock's last known address and left a contact card but did not connect with him.

[7] On or about October 19, 2022, Morelock "almost t-boned" a car being driven by teenager Kylah Stanley. Tr. Vol. 2 at 30. When both vehicles stopped, Morelock demanded that Stanley return items that belonged to his daughter. Morelock's daughter and Stanley had recently ended their friendship, and Stanley still possessed some of Morelock's daughter's belongings. Stanley agreed that she would retrieve the items from her home and drop them off that day. Stanley traveled to her home, placed the items in her trunk, drove with a friend to Morelock's house, and messaged Morelock "multiple times" upon arrival. *Id.* at 34. After about five minutes, Stanley contacted Morelock, Morelock descended the stairs of his home as another unknown person left toward a nearby parking lot, and Stanley exited her vehicle on her way to the trunk. Before Stanley made it to the trunk, Morelock struck her left shoulder

³ Our chronological recitation of evidence slightly alters the alphabetical order of the paragraphs listed in the probation violation notice.

with what she thought was a metal pole. *Id.* at 36-37. Stanley felt the “worse [sic] pain [she’d] ever experienced in [her] life,” and she could not move her arm. *Id.* at 37. Stanley saw Morelock holding the pole, and she fell to the ground. Morelock used a closed fist to punch her in the face. Stanley’s nose bled, and she temporarily “black[ed] out.” *Id.* at 38-39. Stanley awoke in time to see Morelock’s “girlfriend” enter Stanley’s car on the driver’s side and, without permission from Stanley, drive away in it. *Id.* at 39-40. At that point, Stanley, who had no phone, could not locate her glasses, “could barely see,” heard gunshots, and ran with her friend away from the scene. *Id.* at 43. A couple of streets away, Stanley and her friend saw another friend, who drove them farther from the scene, stopped at a park, and lent Stanley a cell phone. Stanley called 911, and police responded. At the police department, Stanley explained what had transpired, and police documented her injuries, including marks on her neck and a large welt on her shoulder. When police found Stanley’s car, it contained a pipe wrench that she had “never seen” and that did not belong to her. *Id.* at 73. Police sought Morelock and his girlfriend but did not locate them.

[8] On or about October 28, 2022, police encountered Morelock exiting a vehicle in a driveway and were able to serve a warrant and arrest him. After handcuffing Morelock, police “found several knives on him and then in his front hoodie pocket [police] found a magazine” with nine-millimeter rounds in it. *Id.* at 93. An unloaded nine-millimeter handgun was found on the passenger side of the vehicle, but no other nine-millimeter magazines were found in the vehicle.

[9] In January 2023, the trial court held a revocation hearing and issued an order, which noted that Morelock admitted six violations and found that the State met its burden of proof as to the three other alleged violations. The court revoked the two years of probation and ordered Morelock to serve the previously suspended sentence in the DOC with credit time but “[n]o return to probation.” Appealed Order at 1. Morelock appeals.

Discussion and Decision

[10] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Probation revocation is accomplished by a two-step process. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). First, the court makes a factual determination that a violation of a condition of probation actually occurred. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 479-80 (1972)). If the court finds a violation, then the court moves to the second step, determining the appropriate sanction for the violation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

[11] Indiana Code Section 35-38-2-3 outlines due process requirements for probation revocation, including a hearing, representation, and cross examination. Because probation hearings are civil in nature, the State must prove the alleged violations by a preponderance of the evidence. *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995). That is, the State must show only that the defendant more likely than not violated a condition of probation. *See Fry v. State*, 990 N.E.2d

429, 448 (Ind. 2013) (explaining that preponderance standard is lower than beyond a reasonable doubt). When reviewing insufficiency claims in the probation setting, we consider only the evidence most favorable to the judgment, without regard to weight or credibility, and affirm if substantial evidence of probative value supports the trial court's conclusion that a probationer has violated any condition of probation. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014).

[12] Morelock contends that the State presented insufficient evidence to show that he violated the compulsory school attendance law or possessed a firearm as a serious violent felon, let alone that he committed robbery, battery, or thefts. In response, the State cites applicable case law and statutes plus testimony and exhibits from the hearing that it contends proved by a preponderance of evidence each of the new offenses delineated in paragraphs g, h, and i.

[13] Despite Morelock's sufficiency challenge regarding each of the new offenses, we are not convinced that the State failed to meet the preponderance-of-evidence standard required to prove the probation violations alleged in paragraphs g, h, or i. More importantly, "[i]t is well settled that violation of a single condition of probation is sufficient to revoke probation." *Gosha v. State*, 873 N.E.2d 660, 663-64 (Ind. Ct. App. 2007) (citing *Wilson v. State*, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999)); see also *Hammann v. State*, 210 N.E.3d 823, 832 (Ind. Ct. App. 2023), *trans. denied*. Here, toward the latter portion of the revocation hearing, Morelock admitted to not just one violation but to six violations. Tr. Vol. 2 at 104-05. He admitted to testing positive for

methamphetamine and cannabinoids in February 2022 and to testing positive again in March 2022. He also admitted to failing to maintain and/or verify employment to the probation department, failing to submit to a drug screen in May 2022, failing to keep probation informed of his address, and failing to report for a scheduled probation appointment in June 2022. Given this litany of admitted violations, the trial court was well within its discretion to revoke probation, even without considering the new offenses that Morelock denied.

[14] As for the sanction, Morelock asserts that the trial court abused its discretion when it imposed “full revocation.” Appellant’s Br. at 15. Morelock blames some of his violations on drug addiction and characterizes the others as “far less serious omissions.” *Id.* at 17. He also seems to argue that it is unclear whether the trial court would have imposed the same sanction if it had not relied upon what he terms “improper findings,” that is, the violations outlined in g, h, and i. *Id.* We disagree.

[15] “[A] trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the trial court’s “decision is clearly against the logic and effect of the facts and circumstances” before the court. *Id.* Upon finding that a defendant has violated a condition of his probation, the trial 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)(3). In determining the appropriate sanction upon finding a probation violation, trial courts are not required to

balance aggravating and mitigating circumstances. *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*.

[16] Having reviewed the transcript, we note that the trial court not only found by a preponderance of evidence that Morelock committed the violent acts outlined in g, h, and i, but also provided a lengthy and thorough explanation of the supporting evidence for each allegation. Tr. Vol. 2 at 112-15. That said, we are confident that the trial court would have ordered the same sanction even if it had not considered the three violations listed in g, h, and i. Morelock tested positive for illegal substances in two separate drug screens. Each screen revealed that he had consumed methamphetamine and cannabinoid. Such violations are not insignificant, especially given that Morelock was on probation for drug offenses. The trial court was not required to discount these violations on grounds of claimed addiction, particularly when Morelock had squandered prior opportunities to address addiction. Indeed, the trial court expressed its frustration with the fact that Morelock “walked away” from probation and drug court and “continued to use.” *Id.* at 119. The other four admitted violations, which Morelock attempts to minimize, nonetheless represent straightforward probation conditions that Morelock agreed to, yet did not, follow.

[17] Morelock has not shown that the trial court’s sanction decision was clearly against the logic and effect of the facts and circumstances before the court. To the contrary, the trial court was well within its discretion when it ordered Morelock to serve the remainder of his sentence in the DOC.

[18] Affirmed.

Riley, J., and Mathias, J., concur.