MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Katigan M. Whitlock,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 12, 2024

Court of Appeals Case No.
23A-CR-1485

Appeal from the Howard Superior Court

The Honorable Hans S. Pate, Judge

Trial Court Cause No.
34D04-2108-F6-002657,
34D04-2109-F6-002936

Memorandum Decision by Judge Felix
Chief Judge Altice and Judge Bradford concur.

Felix, Judge.

Statement of the Case

[1] In January 2022, Katigan Whitlock pled guilty to two counts of invasion of privacy. Pursuant to a plea agreement, the trial court sentenced Whitlock to 18 months on each charge, both suspended to probation. In September 2022, the State filed petitions to revoke Whitlock's probation based on three violations of her probation. The trial court granted the petitions and fully executed her suspended sentences. Whitlock presents two issues on appeal, which we restate as follows:

1. Whether the trial court abused its discretion by revoking Whitlock's probation; and
2. Whether the trial court abused its discretion by executing Whitlock's sentences.

[2] We affirm.

Facts and Procedural History

[3] On August 13 and September 10, 2021, the State charged Whitlock with invasion of privacy as a Level 6 felony for violating a no-contact order that prohibited Whitlock from having contact with her mother. On January 20, 2022, Whitlock accepted a plea agreement. Pursuant to the agreement, the trial court sentenced Whitlock to consecutive terms of 18 months on each count. The trial court suspended both sentences to probation.

[4] Whitlock began supervised probation on March 8, 2022. The conditions were the same for each charge and provided in relevant part:

> 5. You may not consume or possess on your person or in your residence any controlled substance (illegal drug) except as prescribed to you by a licensed physician. You must submit to alcohol and drug testing when ordered by the Probation Department, or any police officer. An attempt to dilute or alter a urine sample is a violation of this order. You are responsible for the payment of the drug testing. A refusal to submit to a urine screen will be considered the same as a positive screen.

Appellant's App. Vol. II at 57, 64. Additionally, Whitlock's probation required her to successfully complete the trial court's alcohol and drug program. As a condition of the program, Whitlock agreed to "abstain from the use of alcohol or other mind-altering drugs" while participating in the program. *Id.* at 56, 62.

[5] On September 1 and September 5, 2022, Whitlock failed to attend drug and alcohol tests ordered by the probation department. On September 6, 2022, field officer Doug Hoover and probation officer Amanda Richardson conducted a home visit for Whitlock. Upon entering the home, Hoover and Richardson observed Whitlock displaying physical signs of intoxication. Whitlock was acting disoriented, and, at one point, she fell down. Additionally, Richardson found an empty wine bottle in Whitlock's trash can. Hoover administered a portable breath test ("PBT") on Whitlock which showed that she had a blood alcohol content of .094. Upon request, Whitlock was unable to produce a sample for a drug screen. Throughout the entire home visit, Whitlock was

uncooperative with the officers, acted belligerently, and, at one point, threatened Richardson.

[6] On September 21, 2022, the State filed petitions to revoke Whitlock's probation, alleging three violations: (1) the failure to appear for the September 1 drug and alcohol test, (2) the failure to appear for the September 5 drug and alcohol test, and (3) the positive PBT and inability to submit a sample during the home visit. The petitions also noted that, following the home visit, Whitlock called her probation officer Laura Rood and left a voicemail message on Rood's cell phone, which Rood summarized Whitlock as saying:

> [7] [Whitlock] and [Rood] will meet in court and she is going to sue me for a highly substantial amount of money. She was mad that I sent 2 people to her house. She stated "the other b*tch started opening her refrigerator and helping herself" she stated "next time she is trespassing I am going to knock her the f**k out". She stated anyone that comes into her house and helps themselves is trespassing. She went on saying she is going to sue me and I will not have a job and it is not a threat, but a promise. She has a ton of money and she is going to use it to sue me, destroy my job and ruin my reputation and my name. She also stated "don't ever send anyone to my house again". She stated for me to come myself but I am a chicken sh*t.

Appellant's App. Vol. II at 55, 61.

[8] On February 23, 2023, the trial court held a fact-finding hearing on the State's petitions. At the start of the hearing, Whitlock admitted to the two violations for missing the required drug and alcohol tests. Then, Hoover testified about administering the positive PBT to Whitlock. Whitlock objected to the admissibility of the PBT results, arguing the results lacked the proper

foundation and did not conform to Department of Toxicology standards. The trial court overruled her objection.

[9] The trial court found that Whitlock committed all the violations listed in the petitions to revoke her probation. On March 14, 2023, the probation department filed a memo recommending the proper sanctions for Whitlock's violations. The probation department recommended Whitlock serve the remainder of her sentences in jail because Whitlock's aggressive behavior towards probation officers showed an inability to comply with probation conditions. On June 22, 2023, the trial court revoked Whitlock's probation and ordered her to serve the remainder of both of her suspended sentences with the Indiana Department of Corrections. Whitlock now appeals.

Discussion and Decision

1. The Trial Court Did Not Abuse Its Discretion by Revoking Whitlock's Probation.

[10] Whitlock argues that the trial court erred in revoking her probation. "A trial court's probation decision is subject to review for abuse of discretion. An abuse of discretion occurs 'where the decision is clearly against the logic and effect of the facts and circumstances.'" *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). "A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence." *Brown v. State*, 162 N.E.3d 1179, 1182 (Ind. Ct. App. 2021) (quoting *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014)). "Proof of a single violation is sufficient to permit a trial

court to revoke probation." *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021) (citing *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011)), *trans. denied*), *trans. denied*; *see also* Ind. Code § 35-38-2-3(a).

[11] Whitlock claims the trial court erred by admitting the PBT result because it lacked the proper foundation for scientific evidence. We note that "[a]s a general matter, the Indiana Rules of Evidence do not apply to probation revocation proceedings." *Terpstra v. State*, 138 N.E.3d 278, 288 (Ind. Ct. App. 2019) (citing Ind. Evidence Rule 101(d)(2)). Regardless, Whitlock contends that the admission of the PBT result did not meet the standards set forth in Indiana Evidence Rule 702(b), which provides "[e]xpert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles." However, Evidence Rule 702(b) is inapplicable in a probation revocation hearing, *see* Ind. Evid. R. 101(d)(2); "expert scientific testimony, like any evidence in probation revocation hearings, is admissible only upon some showing of reliability," *Mogg v. State*, 918 N.E.2d 750, 756 (Ind. Ct. App. 2009).

[12] The State presented sufficient evidence as to the reliability of the PBT result. Hoover testified about his training and certification with the PBT device, and he testified that the device had been calibrated and met the standards for its typical use and purpose. Whitlock argues only that the State did not establish the proper foundation for the scientific principles underlying the PBT result per Evidence Rule 702(b). At trial, Whitlock argued that since the PBT results "can't meet the standard of reliability [under Indiana Evidence Rule 702] it

can't have the substantial trustworthiness [required in probation violations under *Reyes*]." Tr. Vol. II at 11. On appeal, Whitlock abandons this argument, and simply argues that the PBT results were inadmissible pursuant to Evidence Rule 702, statutory, and regulatory codes. On appeal, she does not challenge the reliability of the PBT result under the standard applicable to probation revocation hearings. *See Mogg v. State,* 918 N.E.2d 750, 756 (Ind. Ct. App. 2009). Here because there was sufficient evidence of reliability of the PBT results, we do not find the trial court abused its discretion in admitting the PBT results.

[13] Whitlock also claims that the trial court should have excluded the PBT result because the test and subsequent result did not conform to Department of Toxicology rules. Whitlock points to Indiana Code § 9-30-6-5(d), which states

> Results of chemical tests that involve an analysis of a person's breath are not admissible in a proceeding *under this chapter, IC 9–30–5, IC 9–30–9, or IC 9–30–15* if:
>
> (1) the test operator;
>
> (2) the test equipment;
>
> (3) the chemicals used in the test, if any; or
>
> (4) the techniques used in the test;
>
> have not been approved in accordance with the rules adopted under subsection (a).

(Emphasis added). This statute is inapposite to this case. Regardless of any compliance with Department of Toxicology rules, this limitation applies only to the four enumerated chapters of the Indiana Code. *See* Ind. Code § 9-30-6-5(d); *Priest v. State*, 215 N.E.3d 1099, 1105–06 (Ind. Ct. App.), *trans. denied*, 222 N.E.3d 931 (Ind. 2023). Whitlock's probation is not being revoked pursuant to any of these chapters. We decline Whitlock's invitation to extend application of this limitation past those chapters enumerated in the statute. *See Priest*, 215 N.E.3d at 1106.

[14] Notwithstanding the PBT result, there was sufficient evidence to support the trial court's finding that Whitlock violated her probation by failing to abstain from alcohol use as required by the trial court's alcohol and drug program. Hoover and Richardson both testified that Whitlock displayed physical signs of intoxication, and Richardson found a wine bottle in Whitlock's trash can. Further, Whitlock admitted to two of the three cited violations, and we need proof of only a single violation to conclude the trial court properly revoked probation, *see Killebrew*, 165 N.E.3d at 582. In sum, we conclude that the trial court did not abuse its discretion by revoking Whitlock's probation.

2. The Trial Court Did Not Abuse Its Discretion by Executing Whitlock's Sentences.

[15] Once a probation violation is found, "the trial court must determine the appropriate sanctions for the violation." *Heaton v.* State, 984 N.E.2d 614, 616 (Ind. 2012). Here, the trial court executed both of Whitlock's sentences.

Whitlock asks us to invoke Indiana Appellate Rule 7(B) to revise her sentence. However, Appellate Rule 7(B) is inapplicable here:

> [T]he appellate evaluation of whether a trial court's sanctions are "inappropriate in light of the nature of the offense and the character of the offender" is not the correct standard to apply when reviewing a trial court's actions in a post-sentence probation violation proceeding. *Prewitt v. State*, 878 N.E.2d 184, 187–88 (Ind. 2007). A trial court's action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. The review and revise remedy of App. R. 7(B) is not available.

Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008). Rather, we review probation violation sanctions for abuse of discretion. *Id.* (citing *Prewitt*, 878 N.E.2d at 188).

[16] "Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014) (quoting *Prewitt*, 878 N.E.2d at 188). One of the sanctions available to trial courts is the ability to "[o]rder execution of all or part of the sentence that was suspended at the time of the initial sentencing." I.C. 35-38-2-3(h)(3); *see Knecht v. State*, 85 N.E.3d 829, 839–40 (Ind. Ct. App. 2017). Whitlock admitted to two of the violations in the State's petition to revoke probation and did not demonstrate the State abused its discretion in finding the third violation occurred. We also note that Whitlock's aggressive behavior towards probation officers indicates an inability to properly participate in probation. Thus, Whitlock seeks relief for her sanction through an improper channel and has

failed to show that the execution of her sentences amounts to an abuse of discretion.

Conclusion

[17] We conclude that the trial court did not abuse its discretion by admitting the PBT results and executing her sentences.

[18] Affirmed.

Altice, C.J., and Bradford, J., concur.

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