

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Joshua S. Brown,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

May 3, 2024

Court of Appeals Case No.
23A-CR-1735

Appeal from the
Montgomery Superior Court

The Honorable
Heather L. Barajas, Judge

Trial Court Cause No.
54D01-1911-F5-3439

Memorandum Decision by Senior Judge Baker
Judges Mathias and Pyle concur.

Baker, Senior Judge.

Statement of the Case

- [1] The State of Indiana moved to revoke Joshua S. Brown’s probation after he tested positive for marijuana and also failed to call the drug testing hotline several times. The trial court granted the State’s motion, revoked Brown’s probation, and imposed a sanction. Brown claims the court erred in revoking his probation. Concluding the trial court did not err, we affirm.

Facts and Procedural History

- [2] Brown committed the offense of Level 5 felony of possession of a handgun without a license. In 2021, the trial court sentenced Brown to five years’ incarceration, suspended to supervised probation. Among other terms and conditions of probation, the court ordered Brown to avoid consuming controlled substances and to submit to drug testing as directed by supervising authorities.
- [3] In January 2023, the State petitioned to revoke Brown’s probation, claiming Brown had tested positive for marijuana and alcohol. The trial court determined Brown had used marijuana and placed him on “zero-tolerance” probation. Appellant’s App. Vol. 2, p. 25.

- [4] In May 2023, the State filed a second petition to revoke probation, alleging: (1) Brown tested positive for marijuana several times; and (2) Brown failed to contact the drug testing hotline when required. The trial court held a fact-finding hearing, during which Brown denied consuming marijuana but admitted he had failed to call the drug testing hotline three times.
- [5] The court determined Brown had violated the terms and conditions of probation as alleged by the State. The court revoked Brown’s probation and ordered him to serve the rest of his previously suspended sentence in the Indiana Department of Correction. This appeal followed.

Discussion and Decision

- [6] Brown argues the trial court should not have revoked his probation. “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Porter v. State*, 117 N.E.3d 673, 674 (Ind. Ct. App. 2018). “A probation revocation hearing is civil in nature[.]” *Mogg v. State*, 918 N.E.2d 750, 759 (Ind. Ct. App. 1999). The State must prove a probation violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(f) (2015).
- [7] “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). An abuse of discretion occurs if the decision is clearly against the logic and effects of the facts and circumstances, or when the trial court misinterprets the law. *Id.* We consider only the evidence most favorable to the judgment,

and we will not reweigh the evidence or judge the credibility of the witnesses. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006).

[8] At the fact-finding hearing, Brown admitted that he had failed to call the drug testing hotline three times. One violation of a condition of probation is enough to support a probation revocation. *Knecht v. State*, 85 N.E.3d 829, 839 (Ind. Ct. App. 2017). But Brown also preliminarily tested positive for THC, a metabolite of marijuana, during an April 12, 2023 urine screen. That positive test was confirmed by a later test. He also preliminarily tested positive for THC on June 19, 2023, with a further test confirming the result. Brown denied consuming marijuana and told the trial court the positive results could have stemmed from his regular consumption of energy drinks. The court was not required to accept his explanation.

[9] Brown further argues he is the sole caretaker for his elderly, ailing mother and his mentally ill daughter and that he has complied with all other aspects of his probation requirements, including attending therapy and performing community service. But those arguments pertain to the sanction the trial court imposed, not to whether Brown violated the terms and conditions of his probation.

[10] Next, Brown claims the trial court erroneously focused on the “zero tolerance” condition of his probation placement. He cites *Woods v. State*, 892 N.E.2d 637 (Ind. 2008), to argue such conditions are “constitutionally suspect.” Appellant’s Br., p. 9. But the *Woods* Court held that the trial court erred in

denying Woods the opportunity to explain his probation violations, reasoning that even probationers on a “strict compliance” protocol must be allowed to present a defense. *Id.* at 641. Here, the trial court allowed Brown to challenge the positive marijuana tests and to present an alternative explanation. The trial court did not abuse its discretion in revoking Brown’s probation. *See Mogg*, 918 N.E.2d at 759 (affirming revocation of probation due to Mogg’s consumption of alcohol; Mogg twice tested positive for alcohol and trial court was not required to accept her denials).

Conclusion

[11] For the reasons stated above, we affirm the judgment of the trial court.

[12] Affirmed.

Mathias, J., and Pyle, J., concur.

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