MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Russell Matthew Sentell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 5, 2024

Court of Appeals Case No.
23A-CR-1862

Appeal from the
Jefferson Circuit Court

The Honorable
Donald J. Mote, Judge

Trial Court Cause No.
39C01-2002-F3-150

Memorandum Decision by Senior Judge Shepard
Chief Judge Altice and Judge Weissmann concur.

Shepard, Senior Judge.

Statement of the Case

[1] Russell Matthew Sentell was on probation for underlying convictions when the probation department filed a petition to revoke his probation, citing his commission of a new offense. The trial court found that Sentell had violated the terms and conditions of his probation and revoked it. Sentell appeals the trial court's order, arguing that the court abused its discretion by admitting the victim's out-of-court statements during the hearing and by imposing the remainder of his previously suspended sentence to be executed in the Department of Correction (DOC) as the sanction. We affirm.

Facts and Procedural History

[2] The probable cause affidavit for the underlying conviction reveals that Sentell, who at the time had ingested methamphetamine, pointed a loaded handgun at his then-girlfriend, as she held their two-year-old daughter. He first accused her of cheating on him and then struck her. Next, Sentell threatened to kill them both if they attempted to leave and then threatened to kill himself. He also threw his then-girlfriend to the ground and choked her. Sentell initially refused to allow them to leave the house, but eventually pushed them outside.

[3] In 2020, Sentell reached a plea agreement wherein he agreed to plead guilty to one count each of Level 6 felony domestic battery, Level 5 felony obstruction of justice, and Class A misdemeanor invasion of privacy. The State agreed to dismiss the additional charges against him, those alleging Level 3 felony criminal confinement, Level 5 felony intimidation, Level 6 felony strangulation, and two counts of Level 6 felony pointing a firearm, along with charges in two unrelated criminal cases. Per the agreement's terms, the court sentenced Sentell to an aggregate of five years with two and one-half years suspended to probation. Sentell was released to community corrections in 2021.

[4] In April of 2023, while still under the supervision of community corrections, Sentell lived with his new girlfriend, E.V., and their respective children from other relationships. On the morning of April 16th, E.V. was feeling unwell and called her mother because she needed help traveling to the hospital. When E.V.'s mother overheard E.V. and Sentell arguing, she called 911. Jefferson County Sheriff's Deputy James Richards arrived at the scene and observed that E.V. was distraught, holding the back of her head, crying, and hyperventilating such that it was difficult to communicate.

[5] After E.V. was transported to and treated at the hospital for her injuries, she told Deputy Richards that on the previous night, Sentell ran toward her, grabbed her by the shirt with both hands, and drove her to the ground so forcefully that he landed on top of her. She hit her head on the ground when they fell. E.V. signed a battery affidavit, swearing under the penalties of perjury that Sentell threw her to the floor causing her to hit her head. The officer

observed the significant knot on the back of her head and learned she had suffered a concussion. Deputy Richards also spoke with Sentell, who said that during the incident he only kicked a water bottle and knocked food off the table. He claimed that E.V. injured herself after trying to kick an Easter basket.

[6] The probation department filed a petition to revoke Sentell's community corrections placement due to his commission of the new criminal offense of domestic battery against E.V. and because he was behind on his fees.

[7] At the revocation hearing, E.V. disavowed her statements to law enforcement, testifying she only remembered "bits and pieces" of the events of April 15th. Tr. Vol. 2, p. 13. She explained she previously was a victim of domestic violence and guessed the argument may have "triggered something," causing her to say what she did to law enforcement. *Id.* However, the next day, she remembered what really happened and notified the prosecutor's office. But, she admitted she had been in communication with Sentell in the interim.

[8] Deputy Richards testified that he spoke with E.V. at the hospital, and he was present when she signed the affidavit and medical release form. He further stated that E.V. appeared to review the documents before signing them and he had no reason to believe that she did not understand the documents.

[9] The trial court found that Sentell had violated his probation by committing the new offense of domestic battery. It revoked Sentell's probation, and sentenced him to two and one-half years executed in the DOC.

Discussion and Decision

I. Admission of Evidence

[10] On appeal, Sentell claims the court abused its discretion by admitting E.V.'s out-of-court statements to law enforcement into evidence. The State contends the issue has been waived for our review. We agree with the State because: 1) Sentell did not object to the evidence at the hearing, *see Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) ("A party's failure to object to an alleged error at trial results in waiver. . . ."); and 2) Sentell has not suggested the issue should be reviewed for fundamental error. *See* Appellant's Br. pp. 9-11.

[11] Nonetheless, Sentell's argument is unavailing. "[B]ecause probation revocation procedures are to be flexible, strict rules of evidence do not apply." *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999); *see also* Ind. Evid. Rule 101(d)(2) (2014). And "judges may consider any relevant evidence bearing some substantial indicia of reliability." *Id.* at 551. "This includes reliable hearsay," *id.*, so long as it "has a substantial guarantee of trustworthiness." *Reyes v. State*, 868 N.E2d 438, 441 (Ind. 2017). The trial court found E.V.'s hearing testimony not credible, whereas E.V.'s out-of-court statements to Deputy Richards were corroborated by her injuries and, to a lesser extent, by Sentell's characterizations of the events. The trial court did not abuse its discretion.

II. Sanctions

[12] Next, Sentell claims, "[u]nder the totality of the circumstances the trial court abused its discretion by revoking all of Sentell's probation and ordering him to serve the entirety of his previously suspended sentence." Appellant's Br. p. 8.

[13] 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. 2013). "[P]robation violation sanctions are subject to appellate review for abuse of discretion." *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008). Such an abuse occurs "where the decision is clearly against the logic and effect of the facts and circumstances." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[14] "[T]he selection of an appropriate sanction will depend on the severity of the defendant's probation violation . . . ." *Heaton*, 984 N.E.2d at 618. Here, Sentell's probation violation was committing a crime of physical aggression against his current girlfriend while on probation for a domestic battery against his former girlfriend. This behavior demonstrates Sentell's persistent disregard for the law, the rights of others, and the trial court's authority. "[T]he commission of any crime is a consequential probation violation that directly and negatively impacts other people." *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied.* "[F]or sentencing alternatives to be viable options for Indiana judges, judges must have the ability to move with alacrity to protect public safety when adjudicated offenders violate the conditions of their sentences." *Cox*, 706 N.E.2d at 550. We find no abuse of discretion here.

Conclusion

[15] In light of the foregoing, we affirm the trial court's judgment.

[16] Affirmed.

Altice, C.J., and Weissmann, J., concur.

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