MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Bradley A. Parke,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 11, 2024

Court of Appeals Case No.
23A-CR-2304

Appeal from the Vermillion Circuit Court

The Honorable Daniel R. Young, Judge

Trial Court Cause Nos.
83C01-1609-F1-1
83C01-2301-F6-4

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Bradley A. Parke appeals the trial court's order that he serve executed time following the court's revocation of his probation. Parke raises a single issue for our review, namely, whether the trial court abused its discretion when it ordered him to serve executed time. We affirm.

Facts and Procedural History

[2] In January 2018, Parke pleaded guilty to Level 2 felony residential burglary, Level 5 felony battery by means of a deadly weapon, Class A misdemeanor battery resulting in bodily injury, and Class A misdemeanor operating a vehicle with an ACE of 0.15 or more. The trial court sentenced Parke to fifteen years executed in the Department of Correction, but the court later modified Parke's sentence to three years in community corrections and twelve years suspended to probation.

[3] Around 10:30 p.m. on January 4, 2023, a law enforcement officer in Vermillion County observed Parke operating a vehicle without any working headlights or taillights. The officer initiated a traffic stop and further observed that Parke appeared to be impaired. Parke then failed multiple field sobriety tests and registered a BAC of 0.129%.

[4] The State charged Parke under a new cause number with Level 6 felony operating a vehicle while intoxicated with a prior conviction and Class A misdemeanor operating a vehicle while intoxicated. At the same time, the State filed a notice of probation violation in the cause number for the 2018

convictions. In July, Parke pleaded guilty to the new felony allegation as well as to the alleged probation violation.

[5] After a sentencing hearing on both the new offense and the probation revocation, the trial court found Parke's "history of criminality" to be an aggravator. Tr. Vol. 2, p. 45. The court also found that "what makes this even worse is that . . . you got intoxicated again and engaged in reckless behavior while you were on probation . . . ." *Id.* The court further found Parke's guilty plea, family support, and his "otherwise . . . law abiding life" to be mitigators. *Id.* at 46. The court then revoked Parke's probation and ordered him to serve six years executed in the Department of Correction, after which, the court added, it would "give [Parke] another chance . . . to return to formal probation." *Id.* at 48.

[6] This appeal ensued.

Discussion and Decision

[7] Parke appeals the trial court's order that he serve six years executed following the revocation of his probation. As our Supreme Court has stated:

> Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. It is within the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated. In appeals from trial court probation violation determinations and sanctions, we 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, or when the trial court misinterprets the law.

Heaton v. State, 984 N.E.2d 614, 616 (Ind. 2013) (cleaned up).

[8] According to Parke, the trial court abused its discretion when it ordered him to serve an executed term upon the revocation of his probation because the court "improperly cited the fact that [Parke] got intoxicated again." Appellant's Br. at 8 (quotation marks omitted). Parke asserts that this shows that the trial court "include[d] material elements of the offense" against him when it ordered him to serve executed time in the Department of Correction; as Parke summarizes, "[b]y definition, the offense of [operating while intoxicated with] a prior conviction . . . involves 'getting intoxicated again' and driving a vehicle." *Id.* at 6, 8. Parke further asserts that the court improperly considered his original sentence to have been too lenient, and he argues that the court did not give appropriate weight to the mitigators of his good behavior following his sentence modification (until the instant offenses at least) and the absence of actual harm to others here.

[9] Parke's assertion that the trial court erred when it noted that he "got intoxicated again" is a nonstarter. Tr. Vol. 2, p. 45. While the trial court could not have considered an element of the new Level 6 felony offense in sentencing Parke *for that offense*, "the imposition of an initial sentence" and the "sentence imposed following the revocation of probation" are fundamentally different types of sentences. *Berry v. State*, 904 N.E.2d 365, 366 (Ind. Ct. App. 2009). Here, the trial court did not impose a new sentence at all; it reinstated a portion of an already imposed sentence. *See id.* And, in doing so, the court was properly concerned with the fact that the new offense was the same type of offense as

one of Parke's prior, underlying offenses. The trial court did not abuse its discretion on this issue.

[10] Neither did the trial court find or rely on a finding that Parke's original sentence was too lenient. To the contrary, the court expressly stated that it "assume[d]" Parke's original sentence was "the appropriate punishment." Tr. Vol. 2, pp. 47-48. As for Parke's remaining arguments, they simply seek to have this Court reweigh the evidence that was before the trial court, which we will not do.

[11] We therefore affirm the trial court's order that Parke serve six years in the Department of Correction following the revocation of his probation.

[12] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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