

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Wytwaine Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 16, 2024

Court of Appeals Case No.
23A-CR-1269

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

The Honorable Matthew E.
Symons, Magistrate

Trial Court Cause No.
49D29-1706-F3-22726

Memorandum Decision by Judge Tavit
Judges Pyle and Foley concur.

Tavit, Judge.

Case Summary

- [1] Wytwaine Jackson admitted to violating the conditions of his probation. The trial court ordered that Jackson serve half of his previously suspended sentence in the Department of Correction (“DOC”) as a sanction. Jackson argues that, due to his mental illness, the trial court abused its discretion in ordering this sanction. We disagree and affirm.

Issue

- [2] Jackson raises one issue on appeal, which we restate as whether the trial court abused its discretion in ordering that Jackson serve half of his previously suspended sentence in the DOC as a sanction for Jackson’s probation violations.

Facts

- [3] Jackson was diagnosed with bipolar disorder and schizophrenia at the age of sixteen, and he has more recently been diagnosed with “split personality disorder,” PTSD, and ADHD. Tr. Vol. II p. 30. On June 19, 2017, the State charged Jackson with two counts: Count I, aggravated battery, a Level 3 felony; and Count II, battery resulting in bodily injury to a public safety officer, a Level 5 felony. Count I alleged that Jackson repeatedly struck a law enforcement officer in the face and head at the Marion County Sheriff’s Office Arrestee Processing Center, which caused the officer to sustain serious injuries. Count II alleged that Jackson repeatedly struck a law enforcement officer in the face and head at the Duvall Residential Center, a work release facility.

- [4] On November 30, 2017, Jackson and the State entered into a plea agreement. Jackson agreed to plead guilty but mentally ill¹ to Count I, aggravated battery, and, in exchange, the State agreed to dismiss Count II. The trial court accepted the plea agreement and sentenced Jackson to thirteen years in the DOC with seven years suspended and two years of probation.
- [5] On October 17, 2019, while Jackson was serving the executed portion of his sentence, the State alleged that Jackson violated the conditions of his probation by committing battery against a public safety official, a Level 6 felony.^{2,3} Meanwhile, Jackson’s family had moved to Minnesota. On January 27, 2023, Jackson admitted to the probation violation. He requested that the trial court continue his probation and transfer his probation to Minnesota.⁴ The trial court continued Jackson on probation in Indiana with “strict compliance” and ordered that Jackson serve 100 days in the Marion County Adult Detention Center followed by thirty days in the Volunteers of America residential program

¹ In general, a defendant who is found or pleads guilty but mentally ill shall be sentenced “in the same manner as a defendant found guilty of the offense.” Ind. Code. § 35-36-2-5(a). Our Supreme Court recently recognized that a plea of guilty but mentally ill “does **not** imply the defendant is less culpable than a guilty defendant” and that the only “special consideration” given to a guilty but mentally ill defendant is that, if committed to the DOC, the defendant “shall be further evaluated and then treated in such a manner as is psychiatrically indicated for his mental illness.” *Miller v. Patel*, 212 N.E.3d 639, 649 n.2 (Ind. 2023) (emphasis in original) (quoting I.C. § 35-36-2-5(c); additional citation omitted).

² A probation violation may occur even while the probationer is still serving an executed portion of his or her sentence because the “probationary period begins immediately after sentencing.” *Baker v. State*, 894 N.E.2d 594, 597-98 (Ind. Ct. App. 2008); *see also* I.C. § 35-38-2-3(a)(1).

³ Jackson was charged accordingly in Cause No 48C04-1905-F6-001061. Jackson pleaded guilty and was sentenced to two years with one year suspended to probation. On December 7, 2023, the State alleged that Jackson violated the conditions of his probation in that case by committing two offenses: battery against a public safety official, a Level 6 felony; and battery by bodily waste, a Level 6 felony. The trial court had not yet ruled on these allegations at the time of this appeal.

⁴ The record does not include a transcript of this hearing.

(“Volunteers of America”) before his probation could be transferred.

Appellant’s App. Vol. II p. 107.

- [6] On February 6, 2023, the State alleged that Jackson violated the conditions of his probation for a second time by: (1) leaving Volunteers of America after one day; and (2) failing to notify the probation department within forty-eight hours of his change of address upon leaving Volunteers of America.⁵ Jackson was held in custody pending hearings on the probation violation petition.
- [7] On March 10, 2023, the Marion County Sheriff’s Department filed a “Verified Motion for Medication,” which sought permission to take “whatever steps are necessary to ensure that [Jackson] receives proper anti-psychotic medication.” *Id.* at 124. The motion alleged that Jackson was non-compliant with treatment, “less restrictive interventions by mental health staff and treatment team [sic] to help [Jackson] control his dangerous behaviors [have] failed,” and Jackson’s behavior created a “risk of serious injury to [Jackson] and/or staff” *Id.* at 123. The trial court granted the motion.
- [8] The trial court held hearings on the State’s probation violation allegations on April 14 and May 12, 2023. Jackson admitted to violating the conditions of his probation by leaving Volunteers of America and failing to notify the probation department of his change of address. According to Jackson, he felt bullied by older individuals who “ran the dorm” at Volunteers of America, and another

⁵ The State also alleged that Jackson violated the conditions of his probation by committing battery resulting in bodily injury, a Class A misdemeanor, and was charged accordingly in Cause No. 49D23-2302-CM-003375. This case was subsequently dismissed, and the State did not proceed on the allegation.

individual threatened and tried to steal from him.⁶ Tr. Vol. II p. 25. Jackson left Volunteers of America on the morning after he arrived. Jackson claimed that he did not have a way to contact the probation department and that he tried to turn himself in to a police officer, but the officer refused to take him into custody because there was no warrant for Jackson’s arrest.

[9] Jackson attributed his probation violations to his mental illness. He testified that he was unmedicated at the time but, following the medication order, he began receiving anti-psychotic medication, and “[i]t’s like everything’s clearer now. . . . I’m feeling better. I’m happy.” *Id.* at 32.

[10] Jackson requested that his probation be transferred to Minnesota, where his family could provide support while he sought treatment. In Minnesota, Jackson planned to participate in a ninety-day inpatient mental health treatment program. Jackson would then stay with his mother while he participated in an outpatient program. Jackson’s father testified regarding the plan for these programs and introduced a letter from a reentry specialist at the Global Prisoner Advocacy Collective, who would assist Jackson in finding “the resources he needs to return into society.” Ex. Vol. I p. 4. When asked how Jackson’s family could ensure that Jackson completed treatment if Jackson decided he no longer wanted to participate, Jackson’s father stated: “Well, that would be a

⁶ Jackson testified that he spoke to Volunteers of America staff about the individual who threatened and tried to steal from him, Tr. Vol. II p. 28; however, he later testified that if he “had another chance, [he would] . . . let a staff [sic] know” he was “having problems with somebody . . . ,” *id.* at 33. In his Statement of the Facts, Jackson does not contend that he spoke to staff about his concerns at Volunteers of America before leaving.

thing that we – we make sure that the place – the facilities make sure he doesn’t leave. And if he does leave, then we’ll have to bring him back.” *Id.* at 39.

[11] The State requested that the trial court impose the entirety of Jackson’s previously suspended sentence. The trial court imposed half of Jackson’s previously suspended sentence, to be served in the DOC, as a sanction for Jackson’s probation violation. The sanction amounted to 1,227 days after accounting for good time credit. The trial court noted that, at the conclusion of this sentence, Jackson’s “obligation on this case [would be] over with.” *Id.* at 55.

[12] In ordering this sanction, the trial court first determined that “community supervision” would not be appropriate because Jackson was on strict compliance with his probation, yet he “was not able to finish more than a day” at Volunteers of America. *Id.* at 53. The trial court further determined that Jackson’s reaction to the situation at Volunteers of America, which the trial court accepted as true, did not give the trial court “faith that in encountering other problems in the future, [Jackson] is going to have a better reaction.” *Id.* at 53-54. Finally, although the trial court agreed with Jackson that the DOC “is not a helpful place for folks who have mental health issues,” the trial court noted that: “The problem is this is not a person who just has mental health issues. This is a person who committed a serious crime, and when given opportunities on probation[,] has not been successful.” *Id.* at 54. Jackson now appeals.

Discussion and Decision

[13] Jackson argues that the trial court abused its discretion in ordering him to serve half—or 1,227 days—of his previously suspended sentence in the DOC as a sanction for his probation violations. We are not persuaded.

[14] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Killebrew v. State*, 165 N.E.3d 578, 581 (Ind. Ct. App. 2021) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. If the trial court finds a probation violation, it “must determine the appropriate sanctions for the violation.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). The trial court may impose any of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h).

[15] “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Heaton*, 984 N.E.2d at 616 (citing *Prewitt*, 878 N.E.2d at 188). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances,” *id.* (citing *Prewitt*, 878 N.E.2d at 188), “or when the trial court misinterprets the law,” *id.* (citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)). “While it is correct that

probation may be revoked on evidence of violation of a single condition, the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation, which will require a determination of whether the defendant committed a new criminal offense." *Heaton*, 984 N.E.2d at 618.

[16] Additionally, our courts have held that, "[a]t a minimum, a probationer's mental state must be considered in the dispositional determination of a probation revocation proceeding" when the probationer's mental state is at issue. *Gaddis v. State*, 177 N.E.3d 1227, 1229 (Ind. Ct. App. 2021) (quoting *Patterson v. State*, 659 N.E.2d 220, 222-23 (Ind. Ct. App. 1995)). A probationer's mental state, however, is not "dispositive." *Patterson*, 659 N.E.2d at 223.

[17] Here, the trial court thoughtfully considered Jackson's mental illness and candidly recognized the DOC's limitations in treating the mentally ill. Jackson testified that he was currently receiving medication while incarcerated and that his symptoms were improving. Jackson had also previously refused medication, and the trial court had concerns regarding Jackson's ability to follow through with treatment.

[18] The trial court also had legitimate concerns about a placement short of the DOC: Jackson was on strict compliance with his probation, yet Jackson violated his probation by leaving Volunteers of America after only one day; Jackson committed several acts of violence leading up to the instant violation;

and this was Jackson's second probation violation in this case.⁷ *See, e.g., Jenkins v. State*, 956 N.E.2d 146, 149-150 (Ind. Ct. App. 2011) (considering, in part, probationer's history of probation violations in holding that trial court did not abuse its discretion in ordering probation violation sanction), *trans. denied*. Finally, given that the trial court could have imposed Jackson's entire suspended sentence, the trial court's sanction here was lenient.

[19] Jackson argues that the trial court gave insufficient consideration to his mental illness. He relies on *Johnson v. State*, 62 N.E.3d 1224 (Ind. Ct. App. 2016), which we find distinguishable. In that case, Johnson was sentenced to eleven years, with seven years executed on home detention and four years suspended to probation for his underlying offense. *Id.* at 1227. The conditions of Johnson's home-detention placement required him to remain inside of his apartment unit. *Id.* The State alleged that Johnson violated the conditions of his home-detention placement by visiting an unapproved location in Bloomington, going to the bank several hours before the time for which his bank visit was approved, going to other locations in the apartment complex, and failing to pay certain fees. *Id.* at 1230-31. The trial court found that Johnson violated the conditions of his home-detention placement and ordered Johnson to serve the remainder of his seven-year executed sentence in the DOC. *Id.* at 1229.

⁷ Jackson's criminal history also reveals that his probation was previously revoked in an unrelated case.

[20] On appeal, we held that the trial court abused its discretion in imposing this sanction. We noted that Johnson had “well-documented mental limitations or illness” and “problems understanding things,” Johnson had previously successfully completed probation and had done well on work release, the record did not demonstrate Johnson’s ability to pay the fees, and the trial court had stated that placing Johnson in the DOC would not be “beneficial” to Johnson. *Id.* at 1228, 1231.

[21] Here, unlike in *Johnson*, Jackson previously violated his probation in this case and, whereas Johnson had done well on work release, Jackson left Volunteers of America after only one day. Additionally, the trial court here imposed a far more lenient sentence than in *Johnson*. Accordingly, we cannot say that the trial court abused its discretion in sanctioning Jackson.

Conclusion

[22] The trial court did not abuse its discretion in sanctioning Jackson for his probation violations. Accordingly, we affirm.

[23] Affirmed.

Pyle, J., and Foley, J., concur.