

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Wade E. Boyer,
Appellant-Defendant,

v.

State of Indiana
Appellee-Plaintiff

March 14, 2023

Court of Appeals Case No.
22A-CR-2001

Appeal from the
Boone Superior Court 1

The Honorable Matthew C.
Kincaid, Judge

Trial Court Cause No.
06D01-2008-F5-1505

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Wade E. Boyer appeals the trial court’s order requiring Boyer to serve the remainder of his original sentence incarcerated as the sanction for his probation violation. Boyer argues the trial court abused its discretion by imposing the harshest possible sanction when this was Boyer’s first violation of probation. Because the trial court found by a preponderance of the evidence that Boyer committed six new crimes, we see no abuse of discretion in the court’s order for Boyer to serve the remainder of his original sentence incarcerated. Accordingly, we affirm.

Facts and Procedural History

[2] In early 2021, Boyer faced charges of Level 5 felony battery by means of a deadly weapon,¹ Level 6 felony battery against a public safety official,² Class A misdemeanor resisting law enforcement,³ Class B misdemeanor disorderly conduct,⁴ and Class B misdemeanor public intoxication.⁵ Boyer agreed to plead guilty to one original charge – Count III: Class A misdemeanor resisting law enforcement – and two amended charges – Amended Count VI: Level 6 felony battery resulting in moderate bodily injury⁶ and Amended Count VII: Class A

¹ Ind. Code § 35-42-2-1(c)(1).

² Ind. Code § 35-42-2-1(c)(1).

³ Ind. Code § 35-44.1-3-1(a)(1).

⁴ Ind. Code § 35-45-1-3(a)(1).

⁵ Ind. Code § 7.1-5-1-3(a)(2).

⁶ Ind. Code §§ 35-42-2-1(b)(1) & 35-42-2-1(d)(1).

misdemeanor battery resulting in bodily injury.⁷ In exchange, the State agreed to dismiss the remaining charges and to have Boyer receive the following sentence:

As to Count III, 1 year suspended with 1 year probation.

As to Amended Count VI, 2 years with all of that time suspended except for 365 days executed on community corrections home detention, assuming the defendant is properly qualified, followed by one year on probation.

As to Count VII, 365 days on community corrections home detention.

The sentences for counts III, VI, and VII shall run concurrent.

Thus, the total sentence shall be 2 years with all of that time suspended except for 365 days initially executed on community corrections home detention, assuming the defendant is properly qualified, followed by 1 year on probation. The defendant shall receive credit for time served from 8/30/20 to 9/4/20 for a total of 6 actual days.

(Appellant’s App. at 41-42) (bold typeset removed). The trial court accepted the plea agreement and entered the sentence in accordance therewith.

[3] Then, on June 12, 2022, while Boyer remained on probation, he began “bickering” with his girlfriend, T.G., with whom he lived. (Tr. Vol. II at 6.) As

⁷ Ind. Code § 35-42-2-1(a)(1)(A).

the day continued, Boyer became “really agitated” because he was drinking alcohol and using methamphetamine. (*Id.*) Around 5:00 p.m., Boyer was “yelling and screaming” at T.G. and then he “attacked” her. (*Id.* at 7.) He threw T.G. into the bedroom, knocked her to the ground, climbed atop her, and repeatedly hit her as she tried to get away. T.G.’s dog attacked Boyer to protect T.G., but Boyer grabbed “the dog in a choke hold and started punching the dog in the head repeatedly, probably . . . five to eight times.” (*Id.* at 8.) Boyer threw the dog in its crate, rushed toward T.G., and punched her in the face, which caused her to fall. Boyer left T.G. alone while he had band practice, and then he “insisted on going to the bar because he needed a drink to calm down.” (*Id.* at 9.) T.G. went to the bar with Boyer after Boyer apologized for attacking her.

[4] When the couple returned home from the bar, they went to bed. T.G. woke around 3:00 a.m. with Boyer sitting on top of her and yelling at her. Boyer then used his legs to pin T.G.’s arms down while he used his hands to hit her in the face and strangle her. She thought he was going to kill her, but then her dog jumped on the bed and attacked Boyer. As Boyer dealt with the dog, T.G. grabbed her phone to record a video of Boyer’s behavior. Boyer took the phone and deleted the video. T.G. then grabbed the phone and began to call 911. Boyer took T.G.’s phone again, threw T.G. on the ground, bit T.G. on the leg, and left the room with the phone. T.G. followed Boyer to the kitchen to get her phone, and Boyer punched her in the face, which knocked her to the ground. T.G. asked Boyer to allow her to leave the house, and Boyer drug her

by her hair and threw her out into the garage. Boyer assaulted T.G. in the garage and then locked her in the garage without keys or a phone.

[5] T.G. raised the garage door and ran to a nearby house. The neighbors allowed T.G. to enter the house and use their phone to call the police. While T.G. was there, Boyer entered the neighbors' house without knocking and rushed toward T.G. where she was sitting on the neighbors' couch. The neighbor stepped between Boyer and T.G., accused Boyer of trespassing, pushed Boyer out the front door, and locked the door. The police arrived soon thereafter.

[6] Based on those events, on June 14, 2022, the State charged Boyer with eight crimes: Level 6 felony strangulation,⁸ Level 6 felony intimidation,⁹ Level 6 felony criminal confinement,¹⁰ Level 6 felony residential entry,¹¹ Class A misdemeanor domestic battery,¹² Class A misdemeanor interference with the reporting of a crime,¹³ Class A misdemeanor cruelty to an animal,¹⁴ and Level 6 felony domestic battery.¹⁵ On June 29, 2022, the probation department filed a petition to revoke Boyer's probation based on the commission of those new

⁸ Ind. Code § 35-42-2-9(c).

⁹ Ind. Code §§ 35-45-2-1(a)(4) & 35-42-2-1(b)(1)(A).

¹⁰ Ind. Code § 35-42-3-3(a).

¹¹ Ind. Code § 35-43-2-1.5.

¹² Ind. Code § 35-42-2-1.3(a)(1).

¹³ Ind Code § 35-45-2-5(1).

¹⁴ Ind. Code § 35-46-3-12(b).

¹⁵ Ind. Code §§ 35-42-2-1.3(a)(1) & 35-42-2-1.3(b)(1).

alleged crimes. T.G testified at the hearing on the State’s petition to revoke. The trial court determined the evidence supported finding by a preponderance of the evidence that Boyer had committed six new crimes: domestic battery, criminal confinement, cruelty to an animal, strangulation, residential entry, and interference with reporting a crime. The court ordered Boyer to serve the remainder of his suspended sentence incarcerated.

Discussion and Decision

[7] Boyer challenges the trial court’s order that he serve the remainder of his sentence incarcerated. “Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his [or her] behavior in lieu of imprisonment.” *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). It “is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court has discretion to set the conditions of probation and “to revoke probation if the conditions are violated.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Revocation of probation is a two-step process. *Id.* The court must first determine whether a violation occurred. *Id.* If the trial court finds the defendant violated the conditions of probation, the trial court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h).

[8] When a defendant appeals from a trial court’s determination of violation and sanction, we review the court’s decision for an abuse of discretion. *Heaton*, 984 N.E.2d at 616. “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.” *Id.* (internal citation omitted). “On review, we consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses.” *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008).

[9] Boyer argues the trial court abused its discretion by not considering “less restrictive alternatives . . . such as work release or home detention.”

(Appellant’s Br. at 13.) He contends:

This was his first probation violation. He completed his initial executed sentence on Community Corrections without any violations, and completed six months of his probation sentence before this violation. Boyer did not miss an appointment, use controlled substances, or have any other disciplinary issues while on probation. Boyer’s new Hamilton County cause . . . is still pending, and [he] has not been proven guilty beyond a reasonable doubt of any of those charges in that case.

(*Id.* at 12-13) (internal record citations omitted).

[10] Contrary to Boyer’s assertions, he did not need to be convicted of the new crimes for revocation of his probation to occur. *See Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015) (“conviction of the new crime is not required”). “Instead, the State must establish by a preponderance of the evidence that the

accused has committed the offense.” *Mosley v. State*, 171 N.E.3d 1031, 1033 (Ind. Ct. App. 2021). The testimony provided by T.G. was sufficient to demonstrate by a preponderance of the evidence that Boyer committed new crimes on the evening of June 12, 2022, and the early morning of June 13, 2022. Nor is it overlooked by us that Boyer committed physical aggression against T.G. and her dog, more than once each over a nine-hour period, while he was on probation for having committed battery of police officer. In light of Boyer’s continued violence against others, we cannot say the trial court abused its discretion in ordering Boyer to serve his remaining time incarcerated. *See, e.g., Pierce*, 44 N.E.3d at 756 (trial court did not abuse its discretion in ordering defendant to serve five-suspended years incarcerated after defendant violated probation by committing two new crimes).

Conclusion

[11] The trial court found Boyer violated his probation by committing six new crimes, some of which were felonies and constituted the same type of offense for which Boyer was serving probation. Based thereon, the trial court did not abuse its discretion when it ordered Boyer to spend the remainder of his sentence incarcerated. We accordingly affirm.

[12] Affirmed.

Mathias, J., and Bradford, J., concur.