

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nathaniel Baker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 12, 2023

Court of Appeals Case No.
22A-CR-2612

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-1904-F1-14773

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] Nathaniel Baker appeals the revocation of his probation, challenging the sufficiency of the evidence. Baker also challenges the court's order that he pay \$9500 in electronic monitoring fees.
- [2] We affirm in part, reverse in part, and remand with instructions.

Facts & Procedural History

- [3] On August 24, 2021, Baker pleaded guilty to child molesting as a Level 4 felony. In accordance with the terms of the plea agreement, the trial court dismissed a charge for Level 1 felony child molesting and sentenced Baker to ten years, all of which was suspended to probation to include "Home Detection as a component." *Appellant's Appendix Vol. II* at 231. The trial court also ordered Baker to pay fees and costs. As a standard condition of probation, Baker was required to "report to Probation as directed and communicate truthfully with the Probation Department." *Id.* at 237. The trial court also ordered Baker to comply with additional conditions for sex offenders, including: "You shall not engage in a sexual relationship with any person who has children under the age of 16 years unless given permission by the Court and your treatment provider." *Id.* at 239.

[4] On January 27, 2022, the State filed a notice of probation violation¹ alleging, in part, that Baker failed to comply with the conditions of electronic monitoring. The State amended the notice on February 22, 2022, and again on March 23, 2022. At a hearing on May 12, 2022, Baker admitted to the alleged violation. The trial court did not revoke his probation but rather sanctioned him to time served and added a mental health evaluation as a condition of his probation. The trial court also reduced the Marion County Community Corrections fees to \$10,000.

[5] On September 9, 2022, the State filed a second notice of probation violation,² alleging that Baker failed to communicate truthfully with the probation department³ and failed to refrain from engaging in a sexual relationship with any person who has children under the age of sixteen without having received permission from the trial court and his treatment provider. The trial court held

¹ In the notice, it is alleged that Baker’s “Total Monetary Obligation” is \$19,415 and that he had paid \$500. *Appellant’s Appendix Vol. II* at 248.

² In this second notice, in a section for “additional information,” it was noted that Baker “was originally assessed \$18,915.00. At Court on 5/12/22, the Court reduced his fees to \$10,000. Mr. Baker has paid \$500.00 in total making his overall balance \$9,500.00.” *Appellant’s Appendix Vol. III* at 42.

³ Specifically, the allegation was:

Nathaniel Baker:

1. **Failed to communicate truthfully with the Probation Department.** This Officer conducts at least 1 appointment with Mr. Baker every month. At every appointment, this Officer asks if he has had any sexual contact and he has always denied. Mr. Baker reported on 9/8/22 that he had sexual contact with a woman a few months ago and acknowledged that he lied to this Officer about this.

Appellant’s Appendix Vol. III at 42 (emphasis in original).

a hearing on October 13, 2022. During the hearing, Kelly Bolinger testified that Baker had been in sex offender treatment with her for about a year and that he was compliant with attendance, participation, and payment of fees but that he was not compliant with taking responsibility for his actions. She further testified that at this stage in his treatment, it was worrisome for him to have sexual contact with anyone. She noted that his history was that he worked at women's shelters and had sexual relationships with vulnerable women who had children and that his underlying crime involved sexual misconduct with a child of a woman he knew. Bolinger expressed concern about Baker's lack of sexual self-regulation and inability to take responsibility and how such could affect recidivism.

[6] Probation officer Jordan Priest also testified that she had worked with Baker throughout the entirety of his probation and that he was "supposed to tell [her] about his sexual relationships." *Transcript Vol. 1* at 24. She informed the court that Baker did inform her of a sexual relationship he had but that he did so "a few months after the fact." *Id.* Priest testified that Baker told her he "had oral sex, giving and receiving with a woman" and that the woman had a fourteen-year-old child. *Id.* at 25.

[7] Baker testified that the woman involved was someone he had dated about three years prior, that she tracked him down, and that the two of them sat in his truck and talked. He further testified that while in his truck, "a sexual act occurred," which Baker described as the woman "pleasuring herself" while he watched. *Id.* at 32. Baker maintained that he never touched the woman and that he only

learned she had a child, who lived in Georgia, just before the woman got out of his truck and left. The trial court confirmed Baker’s testimony that he did not touch the woman and then clearly expressed disbelief, stating, “The Court doesn’t believe you.” *Id.* at 35.

[8] During closing colloquy between the court and the parties, Priest sought to “clarify” her testimony. *Id.* at 41. Over Baker’s objection, the trial court permitted Priest to state on the record:

When I first met Nathaniel Baker, I made it clear every single time I see him I’m going to ask him about if he’s had any sexual contact since the last time.

* * *

When it comes to sexual contact, I made it clear to him if it’s anything beyond when – even kissing or inappropriate touching, that’s considered sexual contact. So, he was fully aware of that. Every time I see him, I did ask about sexual contact, which he denied up until September.

Id. at 41-42. Defense counsel responded, “And he did tell her. I mean, there’s no evidence that there was any threat at the time.” *Id.* at 42. The trial court interjected and stated, “he’s not being truthful. I mean, that’s the gist of it. . . . I believe he lied about it.” *Id.* at 42. The trial court then revoked Baker’s probation and ordered that he serve five years in the Indiana Department of Correction (DOC) and closed out probation. In the court’s sentencing order,

the court included \$9500 in costs and fees. Baker now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Sufficiency

[9] A probation revocation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. *Mateyko v. State*, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), *trans. denied*. When reviewing a claim of insufficient evidence to support a trial court’s decision to revoke probation, we consider only the evidence most favorable to the judgment, and we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Revocation is appropriate if there is substantial evidence of probative value to support the trial court’s conclusion that the probationer has violated the terms of probation. *Lightcap v. State*, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). It is well settled that the violation of a single condition of probation is sufficient to support revocation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

[10] Baker argues that the evidence does not support the court’s finding that he was untruthful with the probation department. He asserts that Priest’s testimony—that he was supposed to tell her about his sexual relationships and that she considered him to be untruthful because he delayed disclosure—is insufficient to support the court’s finding that he was untruthful. Specifically, he argues that because there was no evidence that he was ever advised of a reporting requirement, his delayed disclosure did not support the court’s finding that he

was “untruthful.” *Appellant’s Brief* at 9. He further claims that we cannot consider the “gratuitous additional information provided by Priest after the close of evidence and closing argument.” *Appellant’s Brief* at 11.

[11] Probationers are entitled to certain due process rights in a revocation hearing. *Isaac v. State*, 605 N.E.2d 144, 148 (Ind. 1992). They are entitled at a minimum to written notice of the claimed violations, disclosure of the evidence against them, an opportunity to be heard and present evidence, the right to confront and cross-examine witnesses, and a neutral detached hearing body. *Id.*; *see also* Ind. Code § 35-38-2-3(e) (providing that probationers have the right to confrontation and cross-examination). At the same time, a probation revocation hearing is not to be equated with an adversarial criminal proceeding. *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999). Rather, it is a narrow inquiry, and its procedures are to be more flexible. *Id.*

[12] Priest’s statements near the end of the hearing in which she sought to “clarify” her previous testimony were made during the probation revocation hearing and were, given the flexibility afforded such proceedings, properly before the court. *Transcript Vol. 1* at 41. Thus, Priest’s statements could be considered by the court in deciding whether Baker violated a condition of his probation. Baker did not request to cross-examine Priest as to her statements that she told Baker he needed to report his sexual contacts, including such things as kissing, and that he had not informed her of the sexual encounter with the woman when she asked before his subsequent disclosure, and thus he was not denied the opportunity to cross-examine her. The evidence presented at the probation

revocation hearing establishes by a preponderance of the evidence that Baker was not truthful with the probation department.⁴

2. Fees

- [13] Baker argues that the trial court abused its discretion when it ordered him to pay \$9500 in fees even though the court revoked his probation. The trial court did not address the matter of fees at the probation revocation hearing, yet the sentencing order provided that Baker was required to pay \$9500 in electronic monitoring fees. The State agrees that remand is necessary to address the imposition of fees.
- [14] Sentencing decisions include decisions to impose fees and costs. *Johnson v. State*, 27 N.E.3d 793, 794 (Ind. Ct. App. 2015). A trial court’s sentencing decisions are reviewed under an abuse of discretion standard. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). “An abuse of discretion has occurred when the sentencing decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).
- [15] In addition to other conditions of probation, Ind. Code § 35-38-2-1(d) provides that a court shall order each person convicted of a felony to pay certain fees and

⁴ Because a single violation of probation is sufficient to support revocation, we need not address Baker’s argument challenging that the condition of probation prohibiting him from having “a sexual relationship” as being impermissibly vague.

costs associated with probation. Such fees should reflect the time a defendant actually serves on probation. *Fleming v. State*, 143 N.E.2d 987, 990-91 (Ind. Ct. App. 2020); *Johnson v. State*, 27 N.E.3d 793, 794 (Ind. Ct. App. 2015).

Imposition of fees for a sentence that does not include probation is an abuse of discretion. *See id.*

[16] Here, Baker was initially sentenced to ten years of probation and ordered to pay over \$18,000 in fees and costs, presumably to cover the entirety of the probationary period. This amount was later reduced to \$10,000, of which Baker paid \$500, leaving a balance of \$9500. The State agrees that these fees may have originally reflected the ten-year probationary term to which Baker was originally sentenced. However, upon revoking Baker's probation, the trial court ordered Baker to serve five years in the DOC and closed out all probation. Because the record is not clear whether the \$9500 applies to time Baker already served on probation or whether the fees apply to the term of probation that has been terminated, we must remand to the trial court to make such determination. If the fees apply to time actually served on probation, then imposition of such fees would not be an abuse of discretion. If, however, the fees are or were meant to cover ten years of electronic monitoring costs, then the imposition of such fees is not permitted. *See Fleming*, 143 N.E.2d at 990-91; *Johnson*, 27 N.E.3d at 794.

[17] Judgment affirmed in part, reversed in part, and remanded with instructions.

Riley, J. and Pyle, J., concur.