

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeffery A. Spear,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 9, 2021

Court of Appeals Case No.
21A-CR-30

Appeal from the Hendricks
Superior Court

The Honorable Mark A. Smith,
Judge

Trial Court Cause No.
32D04-1511-F2-19

Altice, Judge.

Case Summary

- [1] Jeffery A. Spear appeals from the revocation of his probation. Specifically, Spear contends that the trial court never provided him with written or oral notice of the conditions of probation and that the State failed to prove by a preponderance of the evidence that he committed a new criminal offense while on probation.
- [2] We affirm.

Facts & Procedural History

- [3] On November 29, 2016, after Spear pled guilty pursuant to a plea agreement to Level 4 felony possession of methamphetamine, the trial court sentenced him to an executed term of ten years in the Indiana Department of Correction (the DOC). The court recommended purposeful incarceration. Thereafter, in December 2017, Spear filed a pro-se petition for modification of his sentence based on his good behavior and completion of the purposeful incarceration program. On January 2, 2018, following a modification hearing, the trial court modified Spear's sentence to nine years, with six executed at the DOC, one executed on work release, and two suspended to probation. In the modification order, the court expressly noted that it had also prepared a separate probation order. The probation order, issued January 5, 2018, listed the terms of probation. Both orders are contained in the record and noted on the chronological case summary.

- [4] While serving his time on work release, the State filed a motion for Spear's early release on April 6, 2020, due to the COVID-19 pandemic. The court granted the motion that same day, ordering Spear to be "immediately released from the custody of the Hendricks County Work Release Facility." *Appendix Vol. II* at 29. This was a few months shy of his projected release date from work release, which would have been July 11, 2020.
- [5] Spear's probation officer, Tim Miller, did not learn of the early release until June 5, 2020, when Miller contacted the work release facility. Miller obtained Spear's most recent contact information from the facility and, that same day, sent a letter to Spear and called and left messages at two different phone numbers that Spear had provided. Miller attempted to make contact again on June 11 and "a couple more times" thereafter. *Transcript* at 38. With no response from Spear, Miller filed a petition and notice of probation violation on July 21, 2020, for failing to report to probation. The trial court issued a warrant for Spear's arrest the following day.
- [6] On September 9, 2020, IMPD Officer Daniel Trump was patrolling a hotel parking lot known for narcotics dealing when a car nearly struck his patrol car. Officer Trump drove around the back of the lot and then watched as the car pulled out and drove away. The driver, later identified as Spear, did not stop at a stop sign, so Officer Trump initiated a traffic stop.
- [7] Upon being stopped, Spear was "very shaky" and had difficulty retrieving his driver's license. *Id.* at 27. Officer Trump eventually ran Spear's information

and learned that he had an active warrant. Officer Trump arrested Spear and arranged for the car to be towed, as none of the three passengers had a valid license. When performing an inventory search of the car, Officer Trump discovered what, based on his training and experience, he believed to be methamphetamine and heroin in and around the driver's seat. Some of the drugs were in tied-off baggies. There was also a digital scale, which had a white, powdery substance on it, "tucked between the driver's seat and the console." *Id.* at 28. Additionally, Officer Trump recovered from the driver's door a zipper case with "miscellaneous tools" and a syringe. *Id.* Spear also had a pouch around his neck that contained syringes. The front seat passenger, who was also arrested, had a messenger bag on the floorboard that contained a used meth pipe and baggie with residue. The two backseat passengers were not arrested.

- [8] Spear was arrested and charged in Marion County with possession of methamphetamine, possession of narcotic drug, and unlawful possession of syringe, all as Level 6 felonies. He was then served, on September 23, 2020, with the warrant out of Hendricks County. His initial probation hearing was held the next day. At this hearing, Spear acknowledged that he "knew [he] had probation" and indicated that he was "checking my case for almost two (2) months" after being released from work release, but he asserted that he received no paperwork about probation at the time of his release. *Id.* at 9. The trial court released Spear on his own recognizance, appointed counsel, and set the matter for an evidentiary hearing.

[9] In the meantime, on October 1, 2020, Miller filed a supplemental petition and notice of probation violation based on the new drug charges out of Marion County. The trial court then issued another arrest warrant for Spear, which was served on October 5, 2020. At the initial hearing on the supplemental petition, Spear once again indicated that he did not know he was supposed to report to probation upon his early release. The trial court then emphasized, “From your community corrections sentence, that is correct, but, it didn’t release you from probation.” *Id.* at 15. The trial court set the matter for a contested hearing.

[10] At the evidentiary hearing on December 7, 2020, Officer Trump testified regarding the arrest in Marion County and his discovery of what he believed to be illegal drugs and related paraphernalia inside the car in which Spear was driving. Officer Trump also detailed his training and experience in relation to identifying controlled substances. Photographs of the seized items were also admitted into evidence. Finally, Miller testified about his own attempts at contacting Spear in June 2020, and he acknowledged that the January 2018 probation order, listing the conditions of probation, was never signed by Spear.

[11] At the conclusion of the hearing, at which Spear did not testify or present any evidence, the trial court found that the State had met its burden by a preponderance of the evidence as to both alleged violations – failure to report and commission of a new criminal offense. The trial court explained:

Specifically, the reason I’m finding in favor of the State ..., the Court did prepare a written probation order at the time that it granted the sentence modification. Mr. Spear was incarcerated at

the [DOC]. He had to [have] been aware of the modification, otherwise he wouldn't have been released from prison. He was sent from prison to the work release facility, um, and the Court fulfilled its obligation to prepare a written probation order which is reflected in the CCS. Uh, with regard to the new criminal offense, the standard is a preponderance of the evidence, the Officer testified based upon his training and experience, he is familiar with both substances that he identified, and that there was, obviously, paraphernalia in the Defendant's possession as depicted in the photographs and the testimony.

Id. at 44. The trial court revoked Spear's probation and ordered him to serve the remainder of his suspended two-year sentence in the DOC. Spear now appeals.

Discussion & Decision

[12] It is well established that probation 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). Once a trial court has exercised its grace by ordering probation rather than incarceration, the trial court has considerable leeway in deciding how to proceed. *Id.*

[13] The State need only prove a violation of probation by a preponderance of the evidence. Ind. Code § 35-38-2-3(f). On appeal, we review the trial court's probation determination for an abuse of discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012). We will consider only the evidence most favorable to the trial court's decision without reweighing the

evidence or judging the credibility of witnesses. *Id.* “If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation.” *Id.* “Evidence of a single probation violation is sufficient to sustain the revocation of probation.” *Smith v. State*, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000).

[14] Spear’s arguments on appeal are two-fold. Initially, he contends that the trial court failed to provide him with proper notice of the terms of his probation. Without being aware of such terms, Spear asserts that “it is impossible to see how the State could have established that [he] knowingly failed to report to probation.” *Appellant’s Brief* at 7. Seemingly conceding that not committing a new crime is an obvious violation of probation regardless of notice, Spear next argues that the State “utterly failed to prove that [he] was in possession of methamphetamine or narcotics.” *Id.* at 8. We find sufficient evidence that Spear committed a new criminal offense and, therefore, need not reach the first of Spear’s arguments.

[15] “The requirement that a probationer obey federal, state, and local laws is automatically a condition of probation by operation of law.” *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*; *see also Williams v. State*, 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998). Further, the identity of a drug can be proven by circumstantial evidence, such as through “the testimony of someone experienced with the drug who identifies the substance.” *Clifton v. State*, 499 N.E.2d 256, 258 (Ind. 1986) (finding sufficient evidence for drug conviction

based on officer's visual identification of the drug based on its distinctive appearance as resembling a bindle of heroin and other surrounding circumstances); *see also Vasquez v. State*, 741 N.E.2d 1214, 1216 (Ind. 2001) ("The opinion of someone sufficiently experienced with the drug may establish its identity, as may other circumstantial evidence.").

[16] Here, the State clearly established by a preponderance of the evidence that Spear committed new criminal offenses while on probation. Officer Trump testified regarding his training and experience in identifying illegal substances, such as methamphetamine and heroin, and he described the distinctive features and packaging of both. In addition to his visual identification of the drugs, the car contained a digital scale with white powder on it, a meth pipe with obvious residue, and syringes. There was ample evidence supporting the trial court's finding of a probation violation.

[17] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.