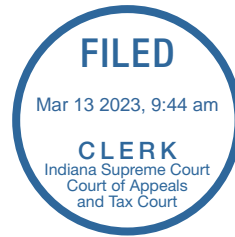


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Kipper L. Doran,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 13, 2023

Court of Appeals Case No.
22A-CR-2157

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause No.
03D01-1903-F6-1473

Memorandum Decision by Judge Tavit
Judges Vaidik and Foley concur.

Tavit, Judge.

Case Summary

- [1] Kipper Doran appeals the trial court's finding that he violated the conditions of his probation.¹ Doran argues that the trial court abused its discretion by finding that Doran violated the conditions of his probation by using methamphetamine and by failing to report to his probation officer. We disagree with Doran's arguments and affirm.

Issue

- [2] Doran raises one issue on appeal, which we restate as whether the trial court abused its discretion by finding that Doran violated the conditions of his probation.

Facts

- [3] On March 15, 2019, the State charged Doran with possession of methamphetamine, a Level 6 felony. Doran pleaded guilty, and on April 29, 2020, the trial court entered judgment of conviction and sentenced Doran to two years in the Bartholomew County Jail, all suspended to probation, with the first year of probation to be served in community corrections.
- [4] The trial court's probationary order included standard conditions which required Doran not to possess or use illegal drugs and to report to his probation officer at reasonable times as directed. The trial court also imposed special

¹ Doran does not challenge the trial court's sanction for Doran's probation violations.

conditions, which required Doran to obtain a substance abuse evaluation and to follow the recommendations of that evaluation.

[5] On January 7, 2022, the State filed a petition to revoke probation and alleged, as relevant here, that Doran violated the conditions of his probation by: 1) using methamphetamine on or about July 17, 2021; and 2) failing to complete treatment recommendations for substance abuse. The State amended its petition on May 17, 2022, to allege that Doran also violated the conditions of his probation by failing to report to his probation officer on October 18, 2021; November 8, 2021; January 4, 2022; March 16, 2022; April 18, 2022; and May 16, 2022. On July 19, 2022, the State again amended its petition, this time to allege that Doran also violated the conditions of his probation by failing to report to his probation officer on July 15, 2022.

[6] The trial court held a hearing on the State's petition on August 10, 2022. Doran's probation officer did not testify; however, the State presented the testimony of Jennifer Whipker Davis, who works at the Bartholomew County Probation Department. Davis testified based on Doran's probation officer's notes and testified that Doran tested positive for methamphetamine on June 17, 2022. Davis further testified that, after Doran tested positive, Doran's probation officer referred him to treatment at Centerstone, where Davis was recommended therapy, and that Doran was unsuccessfully discharged for missing appointments. Davis also testified that Doran failed to report to his probation officer on July 15, 2022, and that Doran came to the probation office

on the following Monday, July 18, 2022, but left before meeting with his probation officer.

- [7] Doran testified and admitted to using methamphetamine on or about June 17, 2021. He further testified that he believed he had been successfully discharged from therapy and that he was not informed that he needed to attend additional appointments.
- [8] Regarding his failure to report to his probation officer, Doran testified that he called the probation department to report that he could not attend appointments during several months in early 2022 because he was working but that his calls went to voicemail. He further testified that he was unaware that he needed to report to his probation officer on July 15, 2022; that he went to the probation office on the following Monday, July 18, 2022; and that he left after waiting there for approximately forty-five minutes.
- [9] The trial court found that Doran violated the conditions of his probation by: 1) using methamphetamine on or about June 17, 2021; and 2) failing to report to his probation officer on October 18, 2021; November 8, 2021; January 4, 2022; March 16, 2022; April 18, 2022; and May 16, 2022; but that Doran did not fail to report on July 15, 2022. The trial court also did not find that Doran failed to complete his treatment recommendations.
- [10] As a sanction for Doran's probation violations, the trial court imposed six months of Doran's previously suspended sentence and terminated Doran's probation unsuccessfully. Doran now appeals.

Discussion and Decision

- [11] Doran argues that the trial court abused its discretion by finding that he violated the conditions of his probation. We disagree.
- [12] ““A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence.”” *Brown v. State*, 162 N.E.3d 1179, 1182 (Ind. Ct. App. 2021) (quoting *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014)); *see also* Ind. Code § 35-38-2-3(f). “Proof of a single violation is sufficient to permit a trial court to revoke probation.” *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021) (citing *Beeler v. State*, 959, N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*), *trans. denied*. “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) (citing *Williams v. State*, 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998); and Ind. Code § 35-38-2-1(b)), *trans. denied*.
- [13] ““When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if ‘there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation.’”” *Brown*, 162 N.E.3d at 1182 (quoting *Murdock*, 10 N.E.3d at 1267). “In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion.” *Heaton v. State*, 984 N.E.3d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). “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)).

[14] Doran first argues that the trial court abused its discretion by finding that he violated his probation by using methamphetamine. Doran admitted to using methamphetamine on or about June 17, 2021, which was during his probationary period. In addition, Davis testified that Doran tested positive for methamphetamine.

[15] Doran argues that, despite this evidence, the trial court nonetheless abused its discretion by finding that Doran’s methamphetamine use amounts to a probation violation. Doran contends that he was referred to therapy after testing positive for methamphetamine, which “resolv[ed]” that violation. Appellant’s Br. p. 11.

[16] As a condition of his probation, Doran was required to abstain from illegal drug use. He failed to do so. Doran cites no authority to support his argument that his methamphetamine use cannot count as a probation violation simply because he followed through on treatment recommendations. Accordingly, the trial

court did not abuse its discretion by finding that Doran violated the conditions of his probation.²

[17] Doran also argues that the trial court abused its discretion by finding that he violated the conditions of his probation by failing to report to his probation officer as directed. We do not address this argument because the trial court's finding that Doran violated the conditions of his probation by using methamphetamine was sufficient to revoke Doran's probation.

Conclusion

[18] The trial court did not abuse its discretion by finding that Doran violated the conditions of his probation. Accordingly, we affirm.

[19] Affirmed.

Vaidik, J., and Foley, J., concur.

² Doran also argues that Davis's testimony was hearsay because Davis testified based on Doran's probation officer's notes. "As a general matter, the Indiana Rules of Evidence do not apply to probation revocation proceedings." *Terpstra v. State*, 138 N.E.3d 278, 287 (Ind. Ct. App. 2019) (citing Ind. Evidence Rule 101(d)(2)); *Cox v. State*, 706 N.E.2d 547, 550-51 (Ind. 1999)), *trans. denied*. Moreover, Doran admitted to using methamphetamine. We, therefore, do not decide whether Davis's testimony is hearsay because it would not affect our decision.