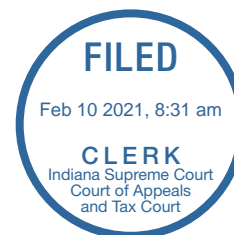


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Melanie Dawn Pierce,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 10, 2021

Court of Appeals Case No.
20A-CR-1706

Appeal from the Crawford Circuit
Court

The Honorable Sabrina R. Bell,
Judge

Trial Court Cause No.
13C01-1904-F6-33

Bailey, Judge.

Case Summary

- [1] Melanie Dawn Pierce (“Pierce”) appeals the revocation of her probation. She articulates four issues for review, one of which we find dispositive: whether she was denied due process because the trial court failed to provide any statement of reasons for the revocation decision. We remand.

Facts and Procedural History

- [2] On February 6, 2020, Pierce pled guilty to Possession of Methamphetamine, as a Level 6 felony.¹ She was sentenced to 730 days imprisonment, with 688 days suspended to probation. Pierce began serving her probation in March of 2020.
- [3] On June 5, 2020, Pierce submitted to a drug screen administered by her probation officer, Janessa Deckard (“Deckard”). Based upon an indication that Pierce had tested positive for methamphetamine, Deckard submitted the urine sample to Witham Laboratories for testing. On June 12, 2020, the Crawford County Probation Department filed a Notice of Probation Violation, alleging that Pierce had tested positive for methamphetamine. On July 23, 2020, an Amended Notice of Probation Violation was filed, additionally alleging that Pierce had been charged with Possession of Marijuana on June 29, 2019.²

¹ Ind. Code § 35-48-4-6.1(a).

² June 29, 2019, predated Pierce’s probationary period. At the hearing, Deckard testified that Pierce had been charged with Possession of Marijuana during her probationary period. Nonetheless, the Notice of Violation was not corrected.

[4] On August 26, 2020, the trial court conducted a fact-finding hearing. Deckard testified regarding her administration of Pierce’s drug screen and disclosed the preliminary and laboratory test results. Pierce then moved to exclude State’s Exhibit 1, a Witham Laboratories drug analysis report, for lack of foundation. The trial court observed that the plea agreement between Pierce and the State provided for Pierce’s stipulation to the admission of reliable test results and admitted State’s Exhibit 1 into evidence. Deckard also testified that she had been present in court when Pierce had been charged with Possession of Marijuana. Pierce and a jail nurse each testified that Pierce held a prescription for a stimulant drug used to treat sleep disorders.

[5] At the conclusion of the evidence, the trial court stated: “The Court’s going to take the issue under advisement and will issue an order.” (Tr. Vol. II, pg. 54.) On September 1, 2020, the trial court issued an order stating in relevant part: “[Pierce] is in violation of probation and shall be revoked 15 actual months with a credit from 6-18-20 – 9-1-20 (74 days).” (Appealed Order at 1.) Pierce now appeals.

Discussion and Decision

[6] Pierce contends that she was denied due process because the trial court failed to state, orally or in writing, any reason for the revocation decision. She additionally argues that there was no evidentiary basis upon which the trial court could have based the revocation decision.

- [7] Our courts have long recognized that probation is an alternative to incarceration and is granted at the sole discretion of the trial court. *Davis v. State*, 743 N.E.2d 793, 794 (Ind. Ct. App. 2001), *trans. denied*. Accordingly, a defendant is not entitled to serve a sentence on probation; instead, probation is a matter of grace and a conditional liberty that is a favor, not a right. *Id.*
- [8] Probation revocation is a two-step process. *Hampton v. State*, 71 N.E.3d 1165, 1171 (Ind. Ct. App. 2017), *trans. denied*. “First, the trial court makes a factual determination that a violation of a condition of probation actually occurred; second, if a violation is proven, the trial court must determine if the violation warrants a revocation of the probation.” *Id.*
- [9] Indiana Code § 35-38-2-3(h) governs the actions that a trial court may take when probation is violated:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more 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.

[10] “[A] trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard.” *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 before the court. *Id.*

[11] “Though distinguished from criminal trials by their informality and flexibility, probation revocation hearings are nonetheless regulated by the Due Process Clause of the Fourteenth Amendment.” *Medicus v. State*, 664 N.E.2d 1163, 1164 (Ind. 1996) (citing U.S. Const., amend. XIV.; *Black v. Romano*, 471 U.S. 606, 610, (1985)). The requirements, applicable to both parole and probation revocation proceedings, include: written notice of the claimed violation, disclosure of the evidence against the probationer; opportunity to be heard in person and to present witnesses and documentary evidence; the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); a neutral and detached hearing body; and a written statement by the factfinder as to the evidence relied on and reasons for the revocation decision. *Id.* In particular, a panel of this Court has addressed the requirement of a statement of reasons for the revocation decision:

The United States Supreme Court has held that, because the revocation of probation results in a loss of liberty, a probationer must be afforded certain due process rights before his probation is revoked. *Dalton v. State*, 560 N.E.2d 558, 559-60 (Ind. Ct. App. 1990) (relying on *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759, 36 L.E.2d 656 (1973)). As part of that due process, the probationer is entitled to a written statement by the fact-

finder as to the evidence relied upon and the reasons for the revocation. *Id.* at 560. The requirement of a written statement providing the reasons for the revocation is “a procedural device aimed at promoting accurate fact finding and ensuring the accurate review of revocation decisions.” *Puckett v. State*, 956 N.E.2d 1182, 1186 (Ind. Ct. App. 2011). While it is not the preferred manner of fulfilling the written statement requirement, the right to a written statement is satisfied if the transcript of the evidentiary hearing present in the record contains a clear statement of the trial court’s reasons for the revocation. *Id.*

Terpstra v. State, 138 N.E.3d 278, 286 (Ind. Ct. App. 2019).

[12] Here, the trial court provided no oral or written statement of a reason or reasons for revoking Pierce’s probation. “Due process requires that the reasons for revoking probation be clearly and plainly stated by the sentencing judge not merely to give appellant notice of the revocation, but also to facilitate meaningful appellate review.” *Medicus*, 664 N.E.2d at 1164. Where “the statement is too cursory to be helpful,” the appropriate remedy is remand. *Id.*

[13] Pierce acknowledges that remand is the appropriate procedural remedy in most cases but argues that it is unnecessary here because the record is devoid of evidence upon which the trial court could have based its decision. She argues that, notwithstanding the plea agreement, State’s Exhibit 1 was inadmissible because the laboratory results were unreliable; “little weight” should be given to the preliminary results obtained by Deckard; revocation cannot rest solely upon the filing of new charges and Pierce arguably admitted to possessing THC as opposed to marijuana; and the evidence is “insufficient because of the

testimony of the prescription.” Appellant’s Brief at 17-18. In other words, Pierce concedes that the State presented evidence but asks that we discard that evidence in its entirety as lacking in foundation or credibility.

[14] But we are not conducting a sufficiency review based upon an adequate record with a determination of what evidence, if any, the trial court found to be credible. Were we doing so, we would look to whether there is “substantial evidence of probative value” to support a trial court’s decision that a defendant has violated the conditions of his probation. *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008). We cannot reweigh the evidence or judge the credibility of the witnesses. *Id.* Pierce’s contention that we may wholesale discard evidence or find her witnesses to be credible has no basis in the law.

Conclusion

[15] Pierce was denied her due process rights as a probationer in revocation proceedings when the trial court failed to provide a reason for the revocation decision.

[16] Remanded for further proceedings consistent with this opinion.

Robb, J., and Tavitas, J., concur.