

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marquise Javon Hunter,
Appellant,

v.

State of Indiana,
Appellee.

February 28, 2022

Court of Appeals Case No.
21A-CR-2109

Appeal from the Hamilton
Superior Court

The Honorable David K. Najjar,
Judge

Trial Court Cause No.
29D05-1903-F6-1587

Brown, Judge.

[1] Marquise Javon Hunter appeals the trial court’s order that he serve 365 days of his previously-suspended sentence following revocation of his probation. We affirm.

Facts and Procedural History

[2] In July 2019, pursuant to a plea agreement, Hunter pled guilty to theft as a level 6 felony in Hamilton County.¹ The trial court sentenced Hunter to 730 days and ordered that the entire sentence be suspended to probation. The order provided that Hunter was required to report to the probation department as directed, comply with all local, state, and federal laws, contact his probation officer within forty-eight hours of being arrested or charged with a new criminal offense, cooperate with and truthfully answer all reasonable inquiries of his probation officer, not consume or possess any controlled substance, submit to alcohol and drug testing when ordered by the probation department, and not be in the presence of marijuana or any other controlled substance which could result in a positive urine screen.

[3] The State filed a “1st Information of Violation of Probation” on June 16, 2020, alleging that Hunter committed new criminal offenses in Hendricks County, specifically, fraud and identity deception as level 6 felonies and theft as a class A misdemeanor. Appellant’s Appendix Volume II at 54. The State filed a

¹ Hunter had been charged with theft for exerting unauthorized control over the property of Boombozz Craft Pizza and Tap, specifically, a tip jar, with the intent to deprive it of any part of its use or value. The affidavit for probable cause stated the tip jar contained approximately \$7 to \$10.

“2nd Information of Violation of Probation” on August 12, 2020, alleging that Hunter committed new criminal offenses in Marion County, specifically, two counts of synthetic identity deception as level 6 felonies and two counts of criminal trespass as class A misdemeanors, and that he did not notify the probation department of the new charges within forty-eight hours. *Id.* at 63.

The State filed a “3rd Information of Violation of Probation” on April 15, 2021, alleging that Hunter failed to report for six scheduled probation appointments, was dishonest with his probation officer regarding his use of illegal drugs, submitted to two urine screens which returned positive results for marijuana, and made an admission to his probation officer on March 5, 2021, that he had consumed marijuana on or about five days earlier. *Id.* at 91.

[4] On August 24, 2021, the court held a hearing. Hunter’s counsel indicated that Hunter had three pending violations, one of those violations was in regard to a Marion County case, and “[t]hat case ha[d] since been resolved.” Transcript Volume II at 4. She further stated: “The other violation, Violation No. 1, deals with a Hendricks County case. That case is still pending. I would ask respectfully if the Court were to ask him in regards to the admission of that violation only whether or not he had reported to Probation within 48 hours that he had been arrested. I’d like to avoid any facts of that case since that case is still pending.” *Id.* at 4-5. With respect to the 1st Information of Violation of Probation, the court asked Hunter whether he admitted or denied the allegation that he did not contact probation within forty-eight hours to report the criminal charges which had been filed against him in Hendricks County, and Hunter

admitted the allegation. The court read the allegations in the 2nd Information of Violation of Probation that Hunter committed new offenses in Marion County and did not report the new charges within forty-eight hours and asked Hunter whether he admitted or denied the allegations, and Hunter admitted the allegations. Hunter further admitted that he failed to report for scheduled probation appointments, was dishonest with his probation officer regarding his use of illegal drugs, submitted to two urine screens which returned positive results for marijuana, and had admitted to his probation officer that he had consumed marijuana as alleged in the 3rd Information of Violation of Probation.

[5] Hunter indicated that he had been sentenced to 529 days on probation in the Marion County case. When asked why he did not report to probation, Hunter answered “[m]ost of the time I was sick or I was having car issues or gas issues” and that he had an autoimmune disorder. *Id.* at 10. He indicated he did not have a car and last had a car four or five months earlier. When asked “what would you tell the Court as to why the Court should put you back on probation,” Hunter testified “I’ve been dealing with this case since 2019. I’m 23 now,” “I’ve been trying to get back into the community. I stay at home. I changed my friendship circle. I’m just trying to be a better person,” “I was originally homeless and I had to pick myself up piece by piece,” “I feel like if I was to be placed somewhere that isn’t my home, everything I have, it would be hard to get again,” “being a felon it’s already hard getting jobs, so I have to find ways to work for myself,” and “[i]f I was to get evicted I would lose my

animals, my apartment, all my property. I'd have to start all over again." *Id.* at 10-11. He stated that he was homeless from 2017 to early 2020.

[6] On cross-examination, Hunter agreed that he owed about \$15,940 in restitution in another case.² When asked to explain the Marion County case, he answered, "it was a company called Sightbox and I took money from the business" and "I signed up through the company. They would pay for the eye exam beforehand and when they gave me a receipt, it had the card number on it and I used a number to order stuff." *Id.* at 13-14. He also indicated he had a previous theft case where he took property from Frye's Electronics. He testified "all these cases you mention, again, I was going through being homeless. The Xbox controllers, I was doing that just to sell it and eat. The tip jar -- even all these things was wrong, I was doing it to eat. It wasn't just for the thrill of it." *Id.* at 15. Hunter's counsel stated that most of Hunter's criminal history involved theft or some sort of identity deception and requested that he be placed back on probation. The prosecutor argued there had not been a change in Hunter's ongoing crimes of dishonesty. A probation officer stated that the Probation Department's position is that it was not sure Hunter would be successful on probation because he was not currently reporting.

² When asked if he owed restitution in another case, Hunter stated "I think I do, for Marion County," and when asked if the amount was "\$15,940 or so," he replied affirmatively. Transcript Volume II at 13. The prosecutor later stated "[j]ust to clarify, . . . the case for which he owes the \$15,000 or so in restitution, he was sentenced on November 13th of 2018. So that's an older one." *Id.* at 18.

[7] The trial court stated “[y]ou are here because you took a tip jar,” and “I am going to sanction you here today because you took a tip jar and I would like for that to sink in to you as to the absurdity of that.” *Id.* at 21. The court stated that Hunter had committed crimes of dishonesty which involved the abuse of trust given to him, he did not commit the crimes because he had an autoimmune disorder or because he was homeless, there was no excuse, and it was very clear that he was required to not commit any more crimes, to show up to probation, and to not do drugs. The court ordered that Hunter serve 365 days of his previously-suspended sentence in the Hamilton County Jail. Hunter filed a motion for modification of sentence, which the court denied.

Discussion

[8] Hunter asserts that “[i]mposing a sanction of a one year executed sentence was an abuse of discretion in a theft case that involved the theft of \$10 because the sanction is disproportionate to the nature of the offense.” Appellant’s Brief at 5.

[9] Ind. Code § 35-38-2-3(h) provides:

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] The Indiana Supreme Court has held that 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). The Court explained that, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that, “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* As long as the proper procedures have been followed in conducting a probation revocation hearing, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence. *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

[11] The record reveals the trial court initially sentenced Hunter to 730 days and that it suspended the entire sentence to probation. Hunter did not appeal his sentence. He admitted that he did not report that he had been charged with new offenses in Hendricks County or Marion County, he had been sentenced in the Marion County case, he failed to report to scheduled probation appointments, and he tested positive for and admitted to using marijuana. In light of Hunter's repeated violations of the terms of his probation and the nature of the violations which included additional crimes, we cannot say that the trial

court abused its discretion in ordering him to serve 365 days of his previously-suspended sentence.

[12] For the foregoing reasons, we affirm the trial court's order.

[13] Affirmed.

May, J., and Pyle, J., concur.