MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Adjani Dee Dowell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2023

Court of Appeals Case No. 23A-CR-1235

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge

Trial Court Cause Nos.
82C01-2206-F5-3524
82C01-2202-F5-900

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

[1] Adjani Dowell appeals the trial court's revocation of his probation and the imposition of the entirety of his previously suspended sentence after he admitted to having violated the terms of his probation. Dowell raises two issues for our review, one of which we find dispositive: whether the trial court denied him due process when it accepted his admission without having properly advised him of his rights. We reverse and remand with instructions.

Facts and Procedural History

[2] On February 16, 2022, the State charged Dowell in one cause number with operating a motor vehicle after forfeiture of a license for life, as a Level 5 felony (Count 1);[1] possession of a narcotic, as a Level 6 felony (Count 2);[2] and possession of marijuana, as a Class A misdemeanor (Count 3).[3] The State also alleged that he was a habitual offender (Count 4).[4] Then, on June 24, the State charged Dowell in a second cause number with operating a motor vehicle after

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[1] Ind. Code § 9-30-10-17(a)(1) (2022).

[2] I.C. § 35-48-4-6(a).

[3] I.C. § 35-48-4-11(a).

[4] I.C. § 35-50-2-8.

forfeiture of a license for life, as a Level 5 felony (Count 1), and alleged that he was a habitual offender (Count 2).

[3] On August 3, Dowell entered into a plea agreement under both cause numbers. Pursuant to that agreement, Dowell agreed to plead guilty to Counts 1 through 3 in the first cause number and to Count 1 in the second cause number. In exchange, the State agreed to seek the dismissal of both habitual offender allegations. The trial court accepted Dowell's plea agreement and sentenced him to an aggregate sentence of five years, fully suspended to probation. The trial court indicated to Dowell that, because of his criminal history and prior petitions to revoke his probation, his current placement on probation was "going to be with zero tolerance." Tr. at 16.

[4] Dowell began his placement on probation on August 25. Dowell's placement included a restriction that he "[n]ot drink alcohol." Appellant's App. Vol. 2 at 62. On March 31, 2023, the State learned that Dowell had tested positive for "EtG,"[5] and Dowell admitted that he had consumed "one Crown and Coke" on March 28. *Id*. at 69. As a result, the State filed a petition to revoke his placement on probation.

[5] The trial court held an initial hearing on the State's petition on April 3. The court explained to Dowell that, if the State's petition were granted, the court could revoke his placement and impose his previously suspended sentence. The

[5] The record does not indicate what "EtG" is, but from context it appears to be an alcohol byproduct.

court then set another hearing for April 5 and ordered Dowell to be "[h]eld without bail[.]" Tr. at 4. At the April 5 hearing, the court asked Dowell if he understood the "nature" of the State's petition. *Id*. at 7. The court then asked Dowell: "You understand you have a right to a hearing on this matter and you have a right to counsel and if you can't afford counsel the Court would appoint counsel to represent you?" *Id*. Dowell responded in the affirmative and indicated that he did not have the funds to hire an attorney. The court found Dowell indigent and stated that it would appoint the public defender to represent him. Dowell asked if he could be released on bond, but the court responded: "No, I was looking at the docket and it said zero tolerance so I think you need an attorney." *Id*.

[6] The court held another hearing on April 12. At the start of that hearing, the court noted that it had not "actually ordered the Public Defender's Officer appointed," so it formally appointed an attorney for Dowell. *Id*. at 10. An attorney in the courtroom requested that the court set the matter for a fact-finding hearing, which the court scheduled for May 3. The court stated that it "went ahead and set this for hearing because [Dowell's] consequences are pretty high" and that, if the court had waited for the formal appointment of Dowell's attorney, "it would be delayed much longer[.]" *Id*. at 11.

[7] The court held the fact-finding hearing on May 3. Dowell was represented by counsel. At the start of the hearing, the following colloquy occurred:

> THE COURT: This is State versus Dowell . . . . We are set for a Petition to Revoke today.

> [Dowell's counsel]: Yes, and Judge we are set for a fact finding but speaking to Mr. Dowell he's prepared to admit the allegations in the Petition.
>
> THE COURT: Sir, you want to admit that you drank a Crown and Coke in violation of the rules of Probation?
>
> [Dowell]: Yes, sir.
>
> THE COURT: Show the Defendant admits the Petition.

Id. at 14. The parties then proceeded to present their arguments regarding disposition.

[8] At the conclusion of the hearing, the court noted that Dowell's placement was zero tolerance and that he has numerous prior convictions as well as prior "violations of probations." *Id*. at 17. The court also noted that it "has done everything [it] can to try getting [him] to just follow the law and follow the rules," but that he does not. *Id*. at 18. Accordingly, the court revoked Dowell's placement on probation and ordered him to serve the entirety of his previously suspended sentence in the Department of Correction. This appeal ensued.

Discussion and Decision

[9] Dowell contends, and the State agrees, that the court violated his due process rights when it did not adequately advise him of his rights before it accepted his admission and revoked his probation. Whether a party was denied due process

is a question of law that we review de novo. *Hilligoss v. State*, 45 N.E.3d 1228, 1230 (Ind. Ct. App. 2015).

[10] "A probationer faced with a petition to revoke his probation is not entitled to the full panoply of rights he enjoyed prior to the conviction." *Cooper v. State*, 900 N.E.2d 64, 66 (Ind. Ct. App. 2009). However, because a probation revocation can result in a loss of liberty, the probationer is entitled to certain due process protections during the proceedings. *Hilligoss*, 45 N.E.3d at 1230. These due process requirements are codified in Indiana Code Section 35-38-2-3.

[11] When a petition to revoke probation is filed, "the court shall conduct a hearing concerning the alleged violation." Ind. Code § 35-38-2-3(d). At such a hearing, evidence must be presented in open court, and the probationer is "entitled to confrontation, cross-examination, and representation by counsel." I.C. § 35-38-2-3(f). If a probationer chooses to admit to a probation violation rather than have an evidentiary hearing, he must be advised that he is giving up those protections. I.C. § 35-38-2-3(e).

[12] Here, at the fact-finding hearing on April 12, the court did not advise Dowell of any rights he was giving up by admitting to the allegations. Rather, as soon as the hearing started, Dowell indicated his intent to admit to the allegations, and the court accepted his admission. The only advisements the court provided Dowell came from the April 5 hearing, at which the court simply advised Dowell that he had a right to a fact-finding hearing and the right to counsel. *See* Tr. at 7. At no point did the court advise Dowell of his right to confrontation or

cross-examination. Because the court failed to properly advise Dowell of all of his rights, the court denied him fundamental due process. *See Saucerman v. State*, 193 N.E.3d 1028, 1031 (Ind. Ct. App. 2022). Accordingly, Dowell is entitled to a new hearing. *Id*. We therefore reverse the revocation of Dowell's probation and remand for a new hearing on the alleged violation.

[13] Still, Dowell appears to assert that we should simply reverse the court's revocation of his placement without another hearing. Specifically, he asserts that the court erred when it failed to timely hold a fact-finding hearing on the State's petition to revoke. According to Dowell, because he was being held in jail, the court was required to hold a hearing on the probation violation within fifteen days pursuant to Indiana Code Section 35-38-2-3(d). Dowell asserts that, despite the court's denial of at least two requests for bond, the "trial court did not schedule a hearing to be held on the revocation petition until 33 days after Dowell's arrest." Appellant's Br. at 11.

[14] When a probation violation allegation is filed, an initial hearing is typically held and the probationer may "admit to a violation of probation and waive the right to a probation violation hearing . . . ." I.C. § 35-38-2-3(e). If the probationer denies the violation of probation, Indiana Code Section 35-38-2-3(d) provides:

> Except as provided in subsection (e), the court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing. A person who is not admitted to bail pending the hearing may not be held in jail for more than fifteen (15) days without a hearing on the alleged violation of probation.

[15] Here, Dowell asserts, and the State does not dispute,[6] that the court denied his requests for bail and did not schedule a hearing until after the fifteen-day requirement had elapsed. While it is not clear, Dowell seems to assert that the statutory violation entitles him to the discharge of the probation violation allegation. However, this Court has recently rejected the same argument:

> The plain language of the statute requires that, if a hearing is not held within the fifteen days of incarceration, then the probationer must be either admitted to bail or released on his own recognizance. . . . The purpose of this provision is to prevent probationers from languishing in jail for minor probation violations while awaiting a fact-finding hearing, which could occur months later. Nothing in the statutory provision requires the **discharge** of the notice of probation violation if the probationer is neither admitted to bail nor released on his own recognizance after the fifteen-day period.

Hammann v. State, 210 N.E.3d 823, 830 (Ind. Ct. App. 2023) (emphasis in original).

[16] Further, the remedy for the court's failure to timely set a hearing "is admittance to bail or release on recognizance, not discharge of the probation violation allegation." *Id*. at 831. Thus, to the extent Dowell is seeking to be relieved from the State's petition, we disagree. While the court may have violated

[6] The State did not respond to this portion of Dowell's argument.

Dowell's statutory right to a hearing within fifteen days, the remedy is not to dismiss the State's petition.

Conclusion

[17] The trial court violated Dowell's due process rights when it failed to adequately advise him of his rights before it accepted his admission. We therefore reverse the court's revocation of his probation and remand for a new hearing.[7] Further, while the court may have violated Dowell's statutory right to either be released on bond or have a fact-finding hearing within fifteen days of the State's petition, that violation does not entitle Dowell to a discharge from the allegations.

[18] Reversed and remanded with instructions.

May, J., and Felix, J., concur.

[7] Because we reverse the court's revocation and corresponding sanction and remand for a new hearing, we need not address Dowell's argument that the court failed to follow a schedule of progressive sanctions or his arguments that the court's sanctions constituted an abuse of discretion given the violation.