

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kahala Rodgers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023

Court of Appeals Case No.
22A-CR-2244

Appeal from the Madison Circuit
Court

The Honorable Mark Dudley,
Judge

Trial Court Cause No.
48C06-1904-F5-1004

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] Kahal Rodgers appeals the trial court’s order finding that he had violated the terms of his probation. Rodgers raises one issue for our review, which we revise and restate as whether the trial court abused its discretion when it determined that he had violated his probation. We affirm.

Facts and Procedural History

- [2] On April 25, 2019, the State charged Rodgers with possession of cocaine, as a Level 5 felony,¹ and possession of marijuana, as a Class B misdemeanor.² On May 24, Rodgers entered into a plea agreement with the State in which he agreed to plead guilty as charged in exchange for a sentence of five years suspended to probation. The court accepted Rodgers’ guilty plea and entered judgment of conviction accordingly. And the court sentenced Rodgers to an aggregate sentence of five years, fully suspended to probation.
- [3] In its written sentencing order, the court outlined certain “special terms” of Rodgers’ placement on probation. In particular, the court ordered Rodgers to abstain from the use of illegal drugs. In addition the court ordered as follows: “On three (3) hour[’]s notice from the Probation Department, defendant [is] ordered to submit to random urine and/or chemical screens[.]” Appellant’s

¹ Ind. Code § 35-48-4-6(b)(1) (2022).

² I.C. § 35-48-4-11(a)(1).

App. Vol. 2 at 44. And the corresponding probation order also provided that Rodgers was required to “submit to breath or urine tests at any time within three (3) hours[.]” *Id.* at 46.

[4] On January 21, 2020, the State filed its first notice of probation violation against Rodgers. In that notice, the State alleged that Rodgers had tested positive for fentanyl and cannabinoids on December 18, 2019. Rodgers admitted to the violation, and the court found as such. On March 13, the court entered its sanctions order in which it returned Rodgers to probation, with the “added condition” that he obtain a substance abuse evaluation, “comply with treatment recommendations, and provide written verification of successful completion” to the probation department. *Id.* at 58. The corresponding probation order then provided that Rodgers was required to obtain a substance abuse evaluation “to be completed within _____, and fully comply with all recommendations.” *Id.* at 59.

[5] On May 12, 2022, the State filed an amended notice of violation of probation against Rodgers. In that notice, the State alleged that Rodgers had failed to participate in a substance abuse evaluation and comply with all treatment recommendations and that he had failed to submit to a drug screen within three hours on May 11.³

³ The State also alleged that Rodgers had failed to timely report to probation, but the court found that the State failed to meet its burden on that allegation.

[6] The court held an evidentiary hearing on the State’s notice on June 3. At that hearing, probation officer Devon Burris⁴ testified that as of May 11, Rodgers had not submitted to a substance abuse evaluation. Burris also testified that, on May 11, Rodgers was asked to submit to a urine screen but that he informed his probation officer that “he couldn’t go.” Tr. at 12. Burris then testified that Rodgers stated that he “had to leave,” at which point his probation officer informed him that “he could not leave before he g[ave] a screen.” *Id.* And Burris testified that Rodgers told his probation officer to “do what you gotta do” and left without submitting to the screen. *Id.*

[7] Rodgers then testified in his defense. In particular, he testified that he reported for the drug screen on May 11. He also testified that he “tried [to urinate] a few times” but “couldn’t go[.]” *Id.* at 15. He then testified that he “was there for a about a little over an hour or an hour and a half” but that he had to leave to pick his son up from daycare because there was no one else available. *Id.* As to the substance abuse evaluation, Rodgers testified that he had submitted to a substance abuse evaluation at Aspire the prior fall but that Aspire “didn’t recommend” any further treatment. *Id.* at 18. He then acknowledged that he failed to provide any paperwork to the probation department and that he “couldn’t find the paperwork” to bring to the hearing. *Id.* And he testified that he did not go to Aspire until the fall of 2021 despite the March 2020 order to

⁴ Burris was not Rodger’s probation officer, but he testified at the hearing because Rodger’s probation officer was unable to attend.

obtain an evaluation because he had “a whole bunch of stuff going on[.]” *Id.* at 21-22.

[8] Following the hearing, the court found by a preponderance of the evidence that Rodgers had violated the terms of his probation when he failed to attend the substance abuse evaluation until the fall of 2021 and when he failed to provide written verification to the probation department. The court also found that Rodgers had violated the terms of his probation when he failed to submit to the drug screen on May 11. The court then “defer[red] sanctions” in order to allow Rodgers to obtain documentation from Aspire to demonstrate that he had attended the evaluation and that they did not recommend further treatment.

[9] The court held a sanctions hearing on July 1. At that hearing, Rodgers showed the court an email on his phone with a copy of a document from Aspire. The document demonstrated that Rodgers had submitted to a substance abuse evaluation in August 2021. However, contrary to Rodgers’ prior testimony, the document indicated that he did “need additional treatment.” *Id.* at 40. When questioned about the discrepancy, Rodgers testified that he “didn’t see” the document initially and that “the lady told him” that he did not need treatment. *Id.* At the conclusion of the sanctions hearing, the court revoked one year of Rodgers’ placement on probation and ordered him to serve it on home detention. This appeal ensued.

Discussion and Decision

[10] Rodgers appeals the trial court’s determination that he violated the terms of his probation. As our Supreme Court has explained:

“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). It is within the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated. *Id.* In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, *id.*, or when the trial court misinterprets the law

Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation actually occurred. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation. *Id.*

Heaton v. State, 984 N.E.2d 614, 616 (Ind. 2013). On appeal, Rodgers only challenges the court’s factual determination that he violated two conditions of his probation. In particular, Rodgers asserts that the court found that he had “violated conditions which were not part of his written probation terms.” Appellant’s Br. at 6.

[11] Regarding the failure to obtain a substance abuse evaluation, Rodgers contends that the probation order “was silent as to when that must be done.” *Id.* at 8. Rodgers is correct that the order did not specify a timeframe in which he was required to obtain the substance abuse evaluation. And we acknowledge, as the

court did, that Rodgers obtained the evaluation, albeit over a year after he was ordered to obtain one. However, the sanctions order did more than require Rodgers to simply submit to the evaluation. It clearly required Rodgers to “comply with the treatment recommendations” and “provide written verification of successful completion” to the probation department. Appellant’s App. Vol. 2 at 58.

[12] And the record is clear that Rodgers did neither. While he asserted to the trial court that “the lady” told him that he did not need to complete any services, the documentation provided that he did indeed “need additional treatment.” Tr. at 40. And there is no dispute that Rodgers did not submit to any additional treatment. In addition, Rodgers admitted at the fact-finding hearing that he “didn’t show” his probation officer “the paperwork” from Aspire. *Id.* at 17. Indeed, the record is clear that Rodgers did not provide any paperwork to the probation department until the date of the sanctions hearing. Because Rodgers neither followed the treatment recommendations nor provided paperwork to the probation department as required, the trial court did not abuse its discretion when it found that Rodgers had violated his probation in this regard.

[13] Regarding the requirement that he submit to a drug test, Rodgers contends that the probation terms “contain[ed] no requirements to give urine screens within 3 hours of demand.” Appellant’s Br. at 9. He therefore maintains that the court abused its discretion when it found that he violated his probation when he left the drug screen facility without having provided a sample. But Rodgers disregards the clear requirement that he submit a sample within three hours.

The court’s written sentencing order that placed Rodgers on probation required him to submit to random urine screens “[o]n three (3) hour[']s notice from the Probation Department.” Appellant’s App. Vol. 2 at 44. Similarly, the corresponding probation order required Rodgers to “submit to breath or urine tests at any time within three (3) hours.” *Id.* at 46. It is therefore clear that Rodgers was required to submit to a urine screen within three hours of the probation department’s request. And the evidence demonstrates that Rodgers failed to comply with that requirement on May 11, 2021, when he left the facility after approximately one and one-half hours without providing a sample and without returning. As such, the court did not abuse its discretion when it found that Rodgers had violated that condition of his probation.

Conclusion

[14] In sum, the court did not abuse its discretion when it found that Rodgers had failed to comply with requirements that he follow the recommendations from the substance abuse evaluation and provide documentation to the probation department. And the court did not abuse its discretion when it found that Rodgers had failed to submit to a drug test within three hours of the probation department’s request. We therefore affirm the court’s order.

[15] Affirmed.

Brown, J., and Weissmann, J., concur.