

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Georgine E. Pearson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 27, 2023

Court of Appeals Case No.
23A-CR-83

Appeal from the Jefferson Superior
Court

The Honorable Blaine S. Goode,
Judge

Trial Court Cause No.
39D01-2111-CM-1212

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Georgine Pearson appeals the trial court's sanction following a probation revocation hearing at which it found Pearson had violated the terms of her probation. She raises one issue on appeal, namely, whether the trial court abused its discretion when it ordered her to serve the remainder of her suspended sentence.

[2] We affirm.

Facts and Procedural History

[3] On November 10, 2021, law enforcement was called to a residence based on a report from Donald Gray that a man was in Gray's house and refused to leave. Gray reported that Pearson, his ex-girlfriend, was also at the house. A protective order had been served on Pearson earlier that day, which prohibited Pearson from having contact with Gray. The police found Pearson and Derrick Brown at Gray's house and arrested both of them.

[4] The State charged Pearson with Class A misdemeanor invasion of privacy,¹ to which she pled guilty. The trial court sentenced Pearson to 365 days in jail with 359 days suspended to probation. The terms of Pearson's probation included requirements that she not use alcoholic beverages, that she not use or possess

¹ Ind. Code § 35-46-1-15.1.

any controlled substances or legend drugs, and that she “permit any type of test or sample to be taken at her expense for the purpose of discovering evidence of illicit drug or alcohol use.” App. at 43. Pearson initialed each such term, thus acknowledging that she had notice of it.

[5] On September 7, 2022, while on probation, Pearson was required to provide a drug screen. Pearson did so, tested positive for marijuana, and admitted to using marijuana. Subsequent lab results were positive for marijuana and indicated Pearson had also used alcohol. Pearson’s probation officer, Ani Bridges, met with her on October 19, 2022, and reminded Pearson that the terms of her probation prohibited her from using alcohol or illegal substances. Bridges also informed Pearson that she would be required to undergo further drug screens; however, Pearson stated that her offense of invasion of privacy did not involve illegal substances and refused to provide any further screens.

[6] On October 26, 2022, the probation department filed a petition to revoke Pearson’s probation, alleging that Pearson had violated the terms of her probation prohibiting her from using alcoholic beverages and illegal substances and requiring her to submit to tests or provide samples for the purpose of discovering evidence of illicit drug or alcohol use. At the fact-finding hearing, the trial court found that Pearson had violated the terms of her probation by using alcohol, using an illicit drug, and failing to provide a drug or alcohol screen. The trial court then determined that Pearson’s refusal to undergo further drug screens made her a poor candidate for probation because “she would be very difficult, if not impossible, to supervise” for compliance with the

terms of probation. Tr. at 16. The trial court revoked the remaining 259 days of Pearson’s suspended sentence. This appeal ensued.

Discussion and Decision

- [7] Pearson argues that the trial court abused its discretion when it revoked her probation as a sanction for her probation violation. “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). We review probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law.” *Id.* (citations omitted). “As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses.” *Jenkins v. State*, 956 N.E.2d 146, 148 (Ind. Ct. App. 2011) (citation and quotation omitted), *trans. denied*.
- [8] A probation revocation proceeding is a two-step process. *Heaton*, 984 N.E.2d at 616. First, the trial court must determine whether the preponderance of the evidence showed that a probation violation occurred. *Id.*; I.C. § 35-38-2-3. Second, the trial court must determine whether the probation violation warrants revocation of probation or some lesser sanction. *Heaton*, 984 N.E.2d at 616. Indiana Code Section 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.

Our Supreme Court has held that this statute “permits judges to sentence offenders using any one of or any combination of the enumerated powers.” *Prewitt*, 878 N.E.2d at 187. And, while probationers must be given the opportunity to present mitigating factors, *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008), the trial court is not required to consider aggravating and mitigating factors when deciding whether to revoke probation, *Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Moreover, a single violation of a condition of probation is sufficient to permit the trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

[9] Here, the trial court did not abuse its discretion when it found Pearson had violated the terms of her probation. Despite Pearson's claim of ignorance of the drug testing requirements, the preponderance of the evidence showed that the terms of Pearson's probation required that she remain drug- and alcohol-free and that she submit to drug screens. The evidence also established that Pearson was aware of those probation terms, as she initialed each one of them. Thus,

the trial court had authority under Indiana Code Section 35-38-2-3(h) to sanction Pearson for her probation violation.

[10] However, Pearson asserts that the trial court abused its discretion by imposing the sanction of probation revocation for her probation violation. She seems to contend that the trial court erred in weighing the mitigating and aggravating circumstances—giving insufficient weight to the non-violent nature of her underlying offense and her cooperation with probation in matters other than additional drug testing and giving too much weight to her refusal to submit to additional drug screens. However, a trial court need not consider mitigating and aggravating factors at all. *Porter*, 117 N.E.3d at 675. Moreover, Pearson’s contentions amount to requests that we reweigh the evidence or judge witness credibility, which we cannot do. *Jenkins*, 956 N.E.2d at 148. Given that a court may revoke probation for a single probation violation, the trial court was well within its discretion when it sanctioned Pearson by ordering her to serve the remainder of her suspended sentence. *Pierce*, 44 N.E.3d at 755.

[11] Affirmed.

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