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

Richard D. Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 29, 2022

Court of Appeals Case No. 22A-CR-1828

Appeal from the Fayette Circuit Court

The Honorable Hubert Branstetter, Jr., Judge

Trial Court Cause No. 21C01-1807-F4-556

Tavitas, Judge.

Case Summary

[1] Richard Jackson appeals the trial court's order finding that he violated the terms of his probation and imposing one year and three months of his previously suspended sentence. Jackson argues that the State presented insufficient evidence to support the trial court's finding that he violated the terms of his probation and that the trial court abused its discretion by imposing one year and three months of his previously suspended sentence. Finding that the State presented sufficient evidence and that the trial court did not abuse its discretion, we affirm.

Issues

[2] Jackson raises two issues on appeal, which we restate as:

I. Whether the State presented sufficient evidence to support the trial court's finding that Jackson violated the terms of his probation.

II. Whether the trial court abused its discretion by imposing one year and three months of Jackson's previously suspended sentence.

Facts

[3] On July 24, 2018, the State charged Jackson with Count I, dealing in methamphetamine, a Level 4 felony, in Cause No. 21C01-1807-F4-556 ("Cause No. F4-556"). On September 20, 2018, the State and Jackson executed a plea agreement wherein Jackson agreed to plead guilty to Count I and to serve a

sentence of six years with four and one-half years executed on work release and one and one-half years suspended to probation. The trial court held a sentencing hearing on November 2, 2018, entered judgment of conviction on Count I, and sentenced Jackson according to the terms of the plea agreement.

[4] On April 8, 2020, Fayette County Community Corrections filed a motion to terminate Jackson's work release placement and alleged that Jackson: 1) failed multiple drug screens; 2) had six "'Escape/Unapproved Locations' reports"; 3) failed to return to work release after being released on temporary leave; and 4) possessed contraband twice. Appellant's App. Vol. II p. 44. On April 13, 2020, the State filed a petition to revoke probation.

[5] At the hearing on the petition to terminate work release and the petition to revoke probation on June 12, 2020, the trial court granted the motion to terminate work release and ordered that Jackson serve the remainder of his executed sentence in the Department of Correction ("DOC"). The trial court dismissed the State's petition to revoke probation on June 16, 2020. Jackson served his executed sentence in the DOC and later began his probationary sentence.

[6] On April 2, 2022, Connersville Police Department Officer Patrick Malone and Officer Kyle Miller were on patrol when they observed a vehicle stopped in an alley with its headlights on. After several minutes passed, the officers approached the vehicle and observed Jackson "in the driver's seat slumped over" and saw that the vehicle was "in gear" and not in "park" mode. Tr. Vol.

II pp. 5, 9. The officers spoke with Jackson, who "thought he was in the street," and "asked [Jackson] to put [the vehicle] in park so it wouldn't roll away[.]" *Id*. at 9. The officers put Jackson "through sobriety tests," and Officer Miller concluded that Jackson was intoxicated. *Id*. at 6. The officers arrested Jackson.

[7] After arresting Jackson, the officers conducted a search of the vehicle and located, "in the back seat in a small [ ] black tray[,] . . . a crystal[-]like substance that [the officers] believed to be methamphetamine." *Id*. at 9. The officers escorted Jackson to the hospital for a blood test.

[8] The State charged Jackson with: Count I, possession of methamphetamine, a Level 6 felony; and Count II, operating a vehicle while intoxicated in a manner that endangers a person, a Class A misdemeanor; in Cause No. 21D01-2204-F6-287. On April 21, 2022, the State filed a petition to revoke probation and alleged that Jackson violated his probation in Cause No. F4-556 by committing the two new offenses.

[9] The trial court held a hearing on the State's petition to revoke probation on June 7, 2022. Officer Malone testified that the officers believed that the crystal-like substance found in Jackson's car was methamphetamine based on its "characteristics" and because "Officer Miller knew about some of [Jackson's] history." Tr. Vol. II p. 9. The State did not present the testimony of Officer Miller, did not present Jackson's blood test results from the night of the arrest,

and did not present lab results for the crystal-like substance found in Jackson's vehicle. The trial court found that Jackson violated the terms of his probation.

[10] The trial court proceeded to determine the sanction for Jackson's probation violation. Jackson testified that, since he was released from the DOC, he found employment, supported his three children and their mother, sought treatment for substance abuse, and passed all of his drug screens. Jackson requested that the trial court place him on work release. The trial court stated, "I have my concerns and don't think work release is a good idea considering that [Jackson] was terminated in this very cause number right at two years ago." *Id*. at 24. The trial court ordered that Jackson serve one year and three months of his previously suspended sentence in Cause No. F4-556 in the DOC as a sanction for his probation violation. Jackson now appeals.

Discussion and Decision

[11] Jackson argues that the State presented insufficient evidence to support the trial court's finding that he violated the terms of his probation and that the trial court abused its discretion by imposing one year and three months of his previously suspended sentence. We disagree.

I. Sufficiency of the Evidence—Probation Violation

[12] "'A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence.'" *Brown v. State*, 162 N.E.3d 1179, 1182 (Ind. Ct. App. 2021) (quoting *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014)); *see also* Ind. Code § 35-38-2-3(f). "Proof of a single

violation is sufficient to permit a trial court to revoke probation." *Killebrew v. State*, 165 N.E.3d 578, 582 (citing *Beeler v. State*, 959, N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*), *trans. denied*.

[13] "The requirement that a probationer obey federal, state, and local laws is automatically a condition of probation by operation of law." *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016) (citing *Williams v. State,* 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998); Ind. Code § 35-38-2-1(b)), *trans. denied*. "'[W]hen the State alleges that the defendant violated probation by committing a new criminal offense, the State is required to prove—by a preponderance of the evidence—that the defendant committed the offense.'" *Brown*, 162 N.E.3d at 1183 (citing *Heaton v. State*, 984 N.E.2d 614, 617 (Ind. 2013)).

[14] "'When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if 'there is substantial evidence of probative value to support the trial court's conclusion that a probationer has violated any condition of probation.'" *Brown*, 162 N.E.3d at 1182 (quoting *Murdock*, 10 N.E.3d at 1267). On appeal, "we review for abuse of discretion." *Heaton*, 984 N.E.3d at 616 (citing *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," *id*. (citing *Prewitt*, 878 N.E.2d at 188), "or when the trial court misinterprets the law," *id*. (citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)).

[15] Jackson argues that the State failed to prove by a preponderance of the evidence either of the alleged offenses—operating a vehicle in a manner that endangers a person or possession of methamphetamine—and that the State, therefore, failed to prove that Jackson violated the terms of his probation. We find that the State presented sufficient evidence that Jackson operated a vehicle while intoxicated in a manner that endangers a person and that this was sufficient for the trial court to find that Jackson violated the terms of his probation.

[16] Indiana Code Section 9-30-5-2 provides:

> (a) Except as provided in subsection (b), a person who operates a vehicle while intoxicated commits a Class C misdemeanor.
>
> (b) An offense described in subsection (a) is a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.

The State alleged Jackson committed the offense of operating a vehicle while intoxicated as a Class A misdemeanor and, thus, was required to prove that Jackson: 1) operated a vehicle; 2) while intoxicated; and 3) in a manner that endangers a person.

[17] Jackson first argues that the State failed to prove by a preponderance of the evidence that he operated a vehicle because Officer Malone did not see Jackson driving the car. Jackson cites cases in which the defendant was found intoxicated in a parked vehicle with its engine running and we held that the evidence was insufficient to support a finding that the defendant operated the

vehicle. *See* Appellant's Br. p. 12 (citing *Clark v. State*, 611 N.E.2d 181, 182 (Ind. Ct. App. 1993); *Mordacq v. State*, 585 N.E.2d 22, 24 (Ind. Ct. App. 1992); *Hiegel v. State*, 538 N.E.2d 265, 268 (Ind. Ct. App. 1989); *Corl v. State*, 544 N.E.2d 211, 213 (Ind. Ct. App. 1989)).

[18] Unlike those cases, however, here, Jackson's vehicle was found in an alley—running and "in gear"—when the officers approached, and the officers had to instruct Jackson "to put it in park so it wouldn't roll away[.]" Tr. Vol. II p. 9. The trial court could reasonably infer that Jackson had operated the vehicle. *See Rose v. State*, 345 N.E.2d 257, 261 (Ind. Ct. App. 1976) (finding evidence that defendant was found in the driver's seat of a vehicle stopped at an intersection supported the inference that the defendant had operated the vehicle). The State, thus, presented sufficient evidence for the trial court to find by a preponderance of the evidence that Jackson operated the vehicle.

[19] Jackson next argues that the State failed to prove that he was intoxicated. He contends that the State's evidence was insufficient because the State did not introduce results of his blood test and relied on the officers' "subjective[]" opinion that Jackson was intoxicated. Appellant's Br. p. 11. We are not persuaded.

[20] Indiana Code Section 9-13-2-86 defines "intoxicated" as "under the influence of [an enumerated substance] so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Thus, "[p]roof of intoxication does not require proof of blood alcohol content; it is sufficient to

show that the defendant was impaired." *Gatewood v. State*, 921 N.E.2d 45, 48 (Ind. Ct. App. 2010) (citing *Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999)), *trans. denied*. "'Impairment can be established by evidence of the following: '(1) the consumption of a significant amount of [an intoxicant]; (2) impaired attention and reflexes; (3) watery or bloodshot eyes; (4) the odor of [an intoxicant] on the breath; (5) unsteady balance; and (6) slurred speech.'" *Awbrey v. State*, 191 N.E.3d 925, 929 (Ind. Ct. App. 2022) (quoting *Wilkinson v. State*, 70 N.E.3d 392, 400 (Ind. Ct. App. 2017)).

[21] Here, the officers found Jackson slumped over in a running vehicle that was left in gear. Jackson mistakenly believed he was in the street, and the officers had to instruct Jackson to put the vehicle in park so that it would not roll away. After speaking with Jackson and putting him through sobriety tests, Officer Miller concluded that Jackson was intoxicated. We find this evidence was sufficient for the trial court to find by a preponderance of the evidence that Jackson was intoxicated.

[22] Finally, Jackson argues that the State failed to prove that he operated the vehicle in a manner that endangered a person pursuant to Indiana Code Section 9-30-5-2-(b). "To prove endangerment, the State must prove that the defendant was operating the vehicle in a condition or manner that could have endangered any person, including the public, the police, or the defendant." *Staten v. State*, 946 N.E.2d 80, 84 (Ind. Ct. App. 2011) (citing *Outlaw v. State*, 918 N.E.2d 379, 381 (Ind. Ct. App. 2009)), *trans. denied*.

[23] Here, as mentioned above, the officers found Jackson slumped over in a running vehicle that was left in gear; Jackson mistakenly believed he was in the street; and the officers had to instruct Jackson to put the vehicle in park. Jackson was clearly not attentive to his surroundings and was at risk of injuring himself and others if the vehicle rolled away. The State, thus, presented sufficient evidence for the trial court to find by a preponderance of the evidence that Jackson operated a vehicle while intoxicated in a manner that endangered a person and, accordingly, violated the terms of his probation.[1]

II. Sanction

[24] "'Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.'" *Killebrew*, 165 N.E.3d at 581 (quoting *Prewitt*, 878 N.E.2d at 188). If the trial court finds a probation violation, it "must determine the appropriate sanction." *Heaton*, 984 N.E.2d at 616. The trial court may:

> (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 year beyond the original probationary period.

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[1] Because the trial court did not err in finding that Jackson violated the terms of his probation by committing this offense, we do not address Jackson's argument regarding the State's possession of methamphetamine allegation.

> (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h).

[25] "While it is correct that probation may be revoked on evidence of violation of a single condition, the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation, which will require a determination of whether the defendant committed a new offense." *Heaton*, 984 N.E.2d at 618. "[T]he defendant must be given an opportunity to offer mitigating evidence showing the violation does not warrant revocation." *Holsapple v. State*, 148 N.E.3d 1035, 1039 (Ind. Ct. App. 2020) (citing *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012)). "However, in determining the appropriate sentence upon finding a probation violation, trial courts are not required to balance aggravating and mitigating circumstances." *Killebrew*, 165 N.E.3d at 582 (citing *Treece v. State*, 10 N.E.3d 52, 59 (Ind. Ct. App. 2014), *trans. denied*). We review a probation revocation for abuse of discretion. *Heaton*, 984 N.E.2d at 616.

[26] Here, Jackson violated his probation by committing a new offense. Further, Jackson previously violated the terms of his work release placement in the same case in numerous ways, which suggests continued leniency by the trial court would not be effective. *See Jenkins v. State*, 956 N.E.2d 146, 150 (Ind. Ct. App. 2011) (affirming revocation of probation when probationer had multiple prior probation violations), *trans. denied*. Jackson argues that the trial court abused its discretion in light of the mitigating evidence Jackson presented. The trial court,

however, was not obligated to balance this mitigating evidence. Accordingly, we find that the trial court did not abuse its discretion by imposing one year and three months of Jackson's previously suspended sentence.

Conclusion

[27] The State presented sufficient evidence for the trial court to find that Jackson violated the terms of his probation, and the trial court did not abuse its discretion by imposing one year and three months of Jackson's previously suspended sentence. Accordingly, we affirm.

[28] Affirmed.

Brown, J., and Altice, J., concur.