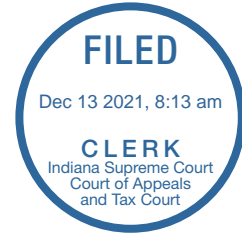


MEMORANDUM DECISION

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

Kyle Rybolt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 13, 2021

Court of Appeals Case No.
21A-CR-896

Appeal from the Madison Circuit
Court

The Honorable Mark K. Dudley,
Judge

Trial Court Cause No.
48C06-1406-FB-1060

Tavitas, Judge.

Case Summary

- [1] Following the revocation of his probation, Kyle Rybolt appeals the trial court's imposition of a portion of his previously-suspended sentence. Rybolt does not deny that he violated certain terms and conditions of his probation; rather, he contends that the trial court's sanction was too extreme. Finding that the trial court did not abuse its discretion, we affirm.

Issue

- [2] The sole issue on appeal is whether the trial court abused its discretion in reinstating a portion of Rybolt's previously-suspended sentence upon finding that Rybolt violated the terms and conditions of his probation.

Facts

- [3] On December 12, 2012, the State charged Rybolt with two counts of sexual misconduct with a minor, Class B felonies. On July 31, 2014, Rybolt pleaded guilty, pursuant to a plea agreement, to both counts. In exchange for Rybolt's guilty plea, the State agreed to a ten-year sentencing cap for the executed portion of Rybolt's sentence. The trial court imposed two, concurrent twenty-year sentences, to be served in the Department of Correction ("DOC"), with ten years executed and ten years suspended to probation. Rybolt was placed on probation for ten years beginning on June 7, 2018. *See* Conf. App. Vol. II p. 76.
- [4] The specific conditions of Rybolt's probation required him to do the following: (1) secure full-time employment of thirty-five hours a week; (2) submit to breath or urine drug screens as requested within three hours' notice; (3) undergo a

substance abuse treatment evaluation and recommended treatment; (4) submit to a psychological evaluation; and (5) participate in sex offender treatment at a facility approved by the probation department. Additionally, the Marion County sex offender terms of probation prohibited Rybolt from having contact with minor children or maintaining internet access on devices that were not registered with Marion County.

[5] On August 29, 2018, the State filed a notice of violation of probation regarding four of the five probation conditions, wherein it alleged that Rybolt failed to undergo a substance abuse treatment evaluation and treatment; secure employment; submit to a psychological evaluation; and participate in sex offender treatment. The trial court found the allegations were true on October 10, 2018, but deferred its imposition of sanctions. On November 19, 2018, the State filed another notice of violation of probation alleging that Rybolt refused numerous mandatory drug tests and still had not secured employment or participated in sex offender treatment. On November 28, 2018, the trial court revoked four years of Rybolt's previously-suspended sentence.

[6] Upon his release from incarceration, Rybolt was placed on probation on October 19, 2020. On February 5, 2021, the State filed another notice of probation violation, which was amended on February 11, 2021. The amended notice alleged that Rybolt failed to: (1) maintain or verify employment; (2) submit to two drug screens in January 2021; (3) keep the probation department informed of his address; and (4) participate in sex offender treatment at a facility approved by the probation department.

[7] The trial court conducted a hearing on the notice of violation on March 31, 2021. Rybolt admitted that he refused to submit to drug testing as requested within three hours' notice on January 22 and January 29, 2021; and that he failed to secure employment as required. Rybolt denied the State's allegations that he failed to keep the probation department informed of his address and failed to participate in sex-offender treatment. On April 14, 2021, the State filed an amended notice of probation violation alleging that Rybolt violated the sex-offender-specific terms of his probation when he contacted a minor and maintained internet access on unregistered electronic devices.

[8] On April 16, 2021, the trial court held an initial hearing as to the second amended notice of probation violation. Rybolt denied the allegations. The trial court then proceeded to conduct an evidentiary hearing on the contested allegations.¹ First, Justin Eubanks of the Madison County Probation Department testified that Rybolt was "being supervised by Marion County as a courtesy transfer." Tr. Vol. I p. 28. Eubanks testified that, despite being ordered to undergo sex offender treatment on October 19, 2020, Rybolt still had not enrolled in treatment as of the February 5, 2021 filing of the notice of probation violation.

¹ To reiterate, the contested allegations were that Rybolt: (1) failed to keep probation informed of his address; (2) refused to participate in sex offender treatment; (3) contacted a minor; and (4) used the internet on unregistered devices.

[9] Next, Marion County probation officer Jordan Priest testified that she referred Rybolt to compulsory enrollment sex offender treatment on January 28, 2021 and supplied him with address information and contact instructions for the approved facility; Rybolt, however, did not contact the treatment center to schedule an assessment until March 22, 2021. Priest testified that she saw Rybolt “approximately three (3) times per month[,]” and “[a]bout every time[,]” she “ask[ed] about his progress with trying to get his assessment scheduled.” *Id.* at 33, 39. Rybolt “would always tell [Priest] that he was waiting on a call back.” *Id.* at 40. When Priest contacted the facility, she discovered that Rybolt did not call to schedule his assessment until March 22, 2021.²

[10] Regarding Rybolt’s alleged failure to comply with the Marion County Sex Offender Terms and Conditions, Priest testified as follows:

[Priest]: [] I conducted a field visit on [Rybolt] last Thursday, [] April 8th. [] [W]e found him to be in possession of two (2) smart phones [on which] he was messaging a minor child through Facebook messenger.

[State]: [] So internet access and devices not registered with Marion County. So take us through that. So do registered sex offenders as a condition of probation have to have all their electronic devices registered with, with you?

² As of the April 16, 2021 hearing, Rybolt had yet to begin treatment; however, he had scheduled his assessment for April 23, 2021.

[Priest]: Registered in as I need to know about them. [] [E]very number and every social media account has to be registered with the local law enforcement registry and those [the phone number and social media account] were not registered.

[State]: And those – So not only was it a violation, it was the fact that he was contacting minor children. That the fact he was, he was doing so also on nonregistered devices?

[Priest]: Correct. . . .³

Id. at 37.

[11] Rybolt testified in his own defense as follows: (1) he actively searched for work, but his criminal record hindered his opportunities; (2) he failed to submit to drug testing due to transportation issues; (3) his delayed participation in sex offender treatment stemmed from his limited and/or restricted phone access; and (4) the contact with a minor was with his god daughter, whose mother “knows about [Rybolt’s] case,” is Rybolt’s best friend, and often participated in the calls. *Id.* at 56. Under questioning from the trial court, Rybolt admitted that he understood the terms and conditions of his sex offender sentences. After Rybolt testified, the State recalled Priest, who testified that Rybolt did have a cell phone—later confiscated—from late December 2020 until the

³ According to Priest, “there was nothing of sexual concern” on the cell phones. Tr. Vol. I p. 45.

middle of March 2021, during the time period when Rybolt claimed to have limited phone access.

[12] At the close of the hearing, the trial court found that the State failed to prove that Rybolt did not supply his address to the probation department. Further, the trial court found that Rybolt violated his probation when Rybolt: (1) failed to enroll in sex offender treatment in a reasonable amount of time; (2) possessed two prohibited cell phones equipped with internet access; and (3) conversed with a minor.⁴ As a probation violation sanction, the trial court revoked three years of Rybolt's remaining six-year sentence and ordered Rybolt to be placed on probation for the remaining three years. Rybolt now appeals.

Analysis

[13] Rybolt argues that the trial court abused its discretion in ordering him to serve three years of his previously-suspended sentence in the DOC, upon the court's determination that Rybolt violated the terms and conditions of his probation. This Court reviews the imposition of sanctions for probation violations for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (quoting *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.*, "or when the trial court misinterprets the law." *Id.*

⁴ The trial court made the following remarks regarding Rybolt's contact with the minor: "I don't care whether [the minor child is] your best friends' [sic] daughter or it's a complete stranger. Do not have contact with a minor period. End of sentence. Pretty straight forward." Tr. Vol. I pp. 69-70.

(citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)). We consider the evidence most favorable to the judgment of the trial court, without reweighing that evidence or judging the credibility of the witnesses. *Ripps v. State*, 968 N.E.2d 323, 326 (Ind. Ct. App. 2012).

[14] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Heaton*, 984 N.E.2d at 616 (quoting *Prewitt*, 878 N.E.2d at 188). “It is within the discretion of the trial court to determine probation conditions and to revoke probation if the conditions are violated.” *Id.* “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.” *Heaton*, 984 N.E.2d at 616 (citing *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.*

[15] Indiana Code Section 35-38-2-3(h), pertaining to the violation of conditions of probation, provides in part as follows:

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.*

I.C. § 35-38-2-3(h) (emphasis added).

[16] Rybolt argues that, given the “wide variety of other options available to sanction [him],” the trial court abused its discretion in remanding him to the DOC for three years. Rybolt’s Br. p. 8. We cannot agree. It is well-settled that the violation of a single condition of probation is sufficient to permit a trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015). Generally speaking, as long as the trial court follows the procedures outlined in Indiana Code Section 35-38-2-3, the court may properly order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. 2021); see *Prewitt*, 878 N.E.2d at 187 (holding that, in revoking a probationer’s previously-suspended sentence, a court can order execution of “all or part” of a suspended sentence).

[17] At the evidentiary hearing, the State established that, after Rybolt pleaded guilty to two felony counts of sexual misconduct with a minor, Rybolt violated three conditions of his probation by delaying his enrollment in and failing to participate in court-ordered sex offender treatment; maintaining unapproved cell phones with internet capabilities; and using one of the cell phones for repeated conversations with a minor—an express violation that Rybolt attempted to justify in open court. We reject Rybolt’s contention that the trial

court's judgment was unduly harsh inasmuch as the court remanded Rybolt to the DOC to serve *half* of his remaining six-year sentence. Rybolt's contentions on appeal merely invite us to reweigh the evidence, which we cannot do.⁵ The judgment is not clearly against the logic and effect of the facts and circumstances before the trial court; the trial court acted within its statutory authority when it revoked Rybolt's previously-suspended sentence and remanded him to the DOC. We find no abuse of discretion.

Conclusion

[18] The trial court did not abuse its discretion in revoking Rybolt's previously-suspended sentence and remanding him to the DOC as a probation violation sanction. We affirm.

[19] Affirmed.

Crone, J., and Bradford, C.J., concur.

⁵ Notably, although Rybolt: (1) characterizes most of his violations as "largely technical[,]" (2) explains that he "made an appointment to get enrolled" in sex offender treatment, (3) emphasizes the absence of sexual matter on his confiscated phones, and (4) describes his contact with the minor as "innocent," we observe he does not deny that he violated the specific conditions of his probation. *See* Rybolt's Br. p. 8. Nor can we regard his cavalier approach to the sex offender terms and conditions of his probation as a technical or minor violation.