

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Zachary L. Scott,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 26, 2024

Court of Appeals Case No.
23A-CR-2172

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley

Trial Court Cause No.
48C06-1803-CM-706

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

[1] Zachary Scott admitted to violating the conditions of his probation by committing several offenses, and the trial court found that Scott also violated the conditions of his probation by committing intimidation and residential entry. The trial court sanctioned Scott by revoking one year of his probation and ordering that Scott serve that year on home detention. Scott appeals and argues that: (1) insufficient evidence supports the trial court's finding that he violated the conditions of his probation by committing intimidation and residential entry; and (2) the trial court abused its discretion in sanctioning Scott for the probation violations. We are not persuaded by these arguments. Accordingly, we affirm.

Issues

- [2] Scott raises two issues on appeal, which we restate as:
- I. Whether sufficient evidence supports the trial court's finding that Scott violated the conditions of his probation by committing intimidation and residential entry.
 - II. Whether the trial court abused its discretion in sanctioning Scott for his probation violations.

Facts

[3] On July 18, 2018, Scott and the State entered into a plea agreement whereby Scott agree to plead guilty as charged in two cases: (1) two counts of battery

resulting in bodily injury to a public safety official, Level 5 felonies; escape, a Level 5 felony; and resisting law enforcement, a Level 6 felony, in Cause No. 48C06-1803-F5-637; and (2) invasion of privacy, a Class A misdemeanor, in the underlying case, Cause No. 48C06-1803-CM-706 (“Cause No. 706”). Scott agreed to serve three years with one year suspended to probation in the former case, and one year suspended to probation in the latter case, to be served consecutively. In exchange, the State agreed to dismiss the charges in a separate case. In July 2020, on the State’s petition, the trial court determined that Scott had violated the conditions of his probation in Cause No. 706 and ordered, as a sanction, that Scott “return to Probation with all original terms to remain in effect.” Appellant’s App. Vol. II p. 116.

[4] The instant appeal stems from events that transpired on the evening of March 24, 2023, in Elwood. That night, Scott and his friend, Corey Amick, went to the residence of Shirley Lann in Elwood. Scott’s wife, Brooklyn, had gone to Lann’s house to “[g]et away from [Scott] because they was [sic] into it.” Tr. Vol. II p. 54. Scott was there to “get Brooklyn to go back home with him.” *Id.* at 53. Scott was “beating” on Lann’s door and told Lann that, if she did not “let him in,” he would “kick in” the door. *Id.* at 52, 53. In the past, Scott had threatened to kill Lann and members of her family.

[5] The door was “unlocked” and “cracked open.” *Id.* at 53, 55. Scott eventually entered the residence and “pushed” past Lann, but Lann did not open the door. *Id.* at 48. Scott found Brooklyn in the bathroom, and Lann heard “screaming and arguing and stuff falling” *Id.* at 53. Scott left the residence when

Lann contacted law enforcement, and Lann was “visibl[y] shaken” when law enforcement arrived. *Id.* at 48.

[6] On April 26, 2023, the State first filed a petition that alleged Scott violated the conditions of his probation by committing resisting law enforcement, a Class A misdemeanor; and criminal mischief, a Class A misdemeanor; as charged in Cause No. 48H03-2304-CM-1173 (“Cause No. 1173”), a separate incident.¹ Then, on May 26, 2023, the State amended the petition to allege, as additional violations, that based on the March 24, 2023 incident, Scott committed intimidation and residential entry, as well as other offenses as charged in Cause No. 48C06-2305-F6-1407.

[7] Scott admitted to violating the conditions of his probation by committing the offenses charged in Cause No. 1173 and denied the allegations stemming from the March 24, 2023 incident. The trial court held an evidentiary hearing on August 18, 2023. Lann and Officer Keegan Russell testified regarding the March 24, 2023 incident. Amick provided a different account. According to Amick, Lann and Brooklyn “let” them into the residence, and Scott did not threaten Lann. *Id.* at 60.

¹ The State also alleged that Scott violated the conditions of his probation by committing resisting law enforcement, a Level 6 felony; and reckless driving, a Class C misdemeanor; in Cause No. 80C01-2304-F6-188; however, the State later withdrew that allegation. Scott eventually pleaded guilty to the latter offense in that case.

[8] The trial court found “Ms. Lann’s testimony to be more credible than Mr. Amick” and that the State proved that Scott violated the conditions of his probation by committing intimidation and residential entry by a preponderance of the evidence. *Id.* at 66. The trial court sanctioned Scott by revoking one year of his probation and ordering him to serve that year on home detention. Scott now appeals.

Discussion and Decision

[9] Scott argues that: (1) the State failed to prove by a preponderance of the evidence that he committed intimidation and residential entry; and (2) the trial court abused its discretion by ordering Scott to serve one year on home detention as a sanction. We conclude that Scott has not carried his burden of persuasion.

I. Probation Violation—Sufficiency of the Evidence

[10] Scott first argues that insufficient evidence supports the trial court’s finding that he violated the conditions of his probation by committing intimidation and residential entry. We disagree. “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). “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)).

[11] “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). “In appeals from trial court’s probation violation determinations and sanctions, we review for abuse of discretion.” *Heaton*, 984 N.E.2d 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)).

[12] To begin, Scott admitted that he violated the conditions of his probation by committing resisting law enforcement, a Class A misdemeanor; and criminal mischief, a Class A misdemeanor; as charged in Cause No. 1173. As for the remaining violation allegations, the State was required to prove that Scott committed intimidation or residential entry by a preponderance of the evidence.

[13] Intimidation is governed, in relevant part, by Indiana Code Section 35-45-2-1(a)(1), which provides, “A person who communicates a threat with the intent . . . that another person engage in conduct against the other person’s will . . . commits intimidation.” A “[t]hreat” includes “an expression, by words or action, of an intention to . . . unlawfully . . . damage property.” *Id* § 1(c)(1). Here, Scott beat on the door and told Lann that he would “kick in” the door if she did not let him in. Tr. Vol. II p. 53. In other words, he threatened to damage Lann’s property. The State, thus, presented sufficient evidence to prove by a preponderance of the evidence that Scott committed intimidation.

[14] As for the residential entry allegation, that offense is governed by Indiana Code Section 35-43-2-1.5, which provides, “A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry.” “In order to establish that a breaking has occurred, the State need only introduce evidence from which the trier of fact could reasonably infer that the slightest force was used to gain unauthorized entry.” *McKinney v. State*, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995) (quoting *Bellmore v. State*, 602 N.E.2d 111, 124–25 (Ind. 1992), *reh’g denied*). “The opening of an unlocked door is sufficient.” *Id.* (citing *Canaan v. State*, 541 N.E.2d 894, 906 (Ind. 1989), *reh’g denied*). Here, Scott opened the cracked, unlocked door and entered Lann’s residence without permission. Lann testified that she did not open the door for Scott or invite him inside. Accordingly, the State presented sufficient evidence to prove by a preponderance of the evidence that Scott committed residential entry.

[15] Scott argues that Amick’s testimony contradicts Lann’s testimony; however, the trial court determined that Lann’s testimony was more credible, and we cannot reweigh the evidence. The State thus proved that—either by committing intimidation, residential entry, or both—Scott violated the conditions of his probation.

II. Sanction—Abuse of Discretion

[16] Scott next argues that the trial court abused its discretion by revoking one year of his probation and ordering that he serve that year on home detention as a sanction for his probation violations. Again, we are not persuaded.

[17] “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Killebrew v. State*, 165 N.E.3d at 578, 581 (Ind. Ct. App. 2021) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. If the trial court finds a probation violation, it “must determine the appropriate sanctions for the violation.” *Heaton*, 984 N.E.2d at 616. The trial court may impose any 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.

Indiana Code Section 35-38-2-3(h). “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 criminal offense.” *Heaton*, 984 N.E.2d at 618. We review a trial court’s sanction for a probation violation for abuse of discretion. *Id.* at 616 (citation omitted).

[18] Here, Scott violated the conditions of his probation by committing intimidation and residential entry. He also admitted to violating the conditions of his probation by committing resisting law enforcement, a Class A misdemeanor; and criminal mischief, a Class A misdemeanor; as charged in Cause No. 1173. These violations were sufficient to support the trial court’s lenient sanction here. Accordingly, the trial court did not abuse its discretion in sanctioning Scott.

Conclusion

[19] The State presented sufficient evidence to support the trial court’s finding that Scott violated the conditions of his probation, and the trial court did not abuse its discretion in sanctioning Scott therefor. Accordingly, we affirm.

[20] Affirmed.

Mathias, J., and Weissmann, J., concur.

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