

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Dale D. Perkins, Jr.,

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

April 28, 2023

Court of Appeals Case No.  
22A-CR-2840

Appeal from the Decatur Superior  
Court

The Honorable Matthew D.  
Bailey, Judge

Trial Court Cause Nos.  
16D01-2110-F5-1048  
16D01-2111-F5-1133

**Memorandum Decision by Judge Brown**  
Judges Bailey and Weissmann concur.

**Brown, Judge.**

[1] Dale D. Perkins, Jr., appeals the revocation of his probation. We affirm.

***Facts and Procedural History***

[2] On October 28, 2021, the State charged Perkins under cause number 16D01-2110-F5-1048 (“Cause No. 1048”) with operating a motor vehicle on or about October 27, 2021, after forfeiture of license for life as a level 5 felony.

[3] On November 22, 2021, the State charged Perkins under cause number 16D01-2111-F5-1133 (“Cause No. 1133”) with operating a vehicle on or about November 21, 2021, after a lifetime suspension as a level 5 felony. On January 7, 2022, the State filed an amended information charging Perkins with Count I, operating a vehicle when driving privileges had been revoked for life as a level 5 felony, and Count II, false informing as a class B misdemeanor. The State also alleged that Perkins was an habitual offender.

[4] On February 21, 2022, Perkins and the State filed a plea agreement under Cause Nos. 1048 and 1133 pursuant to which Perkins agreed to plead guilty to operating a motor vehicle when driving privileges had been revoked for life as a level 5 felony under Cause No. 1048, and operating a motor vehicle when driving privileges had been revoked for life as a level 5 felony enhanced by the habitual offender enhancement and false informing as a class B misdemeanor under Cause No. 1133. Perkins agreed to be sentenced to four years suspended to probation under Cause No. 1048 to be served consecutive to a sentence under Cause No. 1133 of four years for the level 5 felony enhanced by 1,950 days for his habitual offender status with 1,950 days as a direct commitment to

Community Corrections and probation of four years and sixty days for the class B misdemeanor.

- [5] In March 2022, the trial court entered an order accepting the plea agreement and sentencing Perkins under Cause No. 1133 to 1,460 days enhanced by 1,950 days for the level 5 felony, with 1,950 days in Community Corrections subject to home detention and 1,460 days on probation, and sixty days for the class B misdemeanor. Under Cause No. 1048, the court sentenced Perkins to 1,460 days all suspended to probation.
- [6] On March 30, 2022, the State filed a Petition for Revocation of Probation under Cause No. 1048 alleging that Perkins failed to provide urine samples for drug screens on March 12, 14, 17, and 23, 2022, and he submitted to a saliva drug screen on March 17, 2022, which tested positive for methamphetamine. That same day, the State filed a Petition for Revocation of Community Corrections under Cause No. 1133 making similar allegations as well as alleging that Perkins left his residence without authorization on March 12 and 13, 2022, and failed to complete community service work.
- [7] On April 6, 2022, the State filed supplemental petitions for revocation of probation under Cause Nos. 1048 and 1133 alleging that Perkins was charged with escape as a level 6 felony under cause number 16D01-2204-F6-325 (“Cause No. 325”).
- [8] On September 15, 2022, the State filed a second supplemental petition for revocation of probation under Cause No. 1048 alleging that Perkins was

charged on September 14, 2022, with operating a vehicle after lifetime suspension as a level 5 felony under cause number 16D01-2209-F5-899 (“Cause No. 899”) and refused to submit to a urine screen or mouth swab on September 15, 2022. That same day, the State also filed a Petition for Revocation of Court Services alleging Perkins was arrested and charged under Cause No. 899.

[9] On October 27, 2022, the court held a hearing under Cause Nos. 1048 and 1133. Dustin Barkdull, a community corrections case manager, testified that Perkins left his residence without prior authorization on March 12 and 13, 2022. He indicated Perkins was sanctioned for unauthorized leave for March 13th, admitted guilt, and “was given two hours of community service” on March 14, 2022, which he failed to complete. Transcript Volume II at 27. He also indicated that a saliva screen taken in March 2022 tested positive for methamphetamine.

[10] Abigail Harry, the director of Community Corrections at Court Services, testified that Perkins failed to submit drug screens on March 12th, 14th, 17th, 23rd, and September 15th. When asked if Perkins gave an explanation for why he did not provide drug screens, she answered: “I believe he said there were bladder issues.” *Id.* at 31. She also indicated that the grounds for the petitions to revoke probation included new charges for escape under Cause No. 325 and a new criminal offense in Cause No. 899.

[11] Michael Burnett, a field officer for Court Services, testified that he tried to perform drug screens on March 12th, 14th, 17th, and 23rd, Perkins did not

urinate during those times, and each of the times he attempted to screen Perkins lasted an hour. He testified that he obtained a saliva test on March 17, 2022. He also indicated that he went to the county jail to conduct a urine screen or a mouth swab “and it was refused.” *Id.* at 40. On cross-examination, Burnett acknowledged that Perkins told him on March 12th that he had prostate problems.

[12] Peter Tressler, an investigator with the prosecutor’s office, testified that Perkins was charged under Cause No. 899 with “habitual traffic violator lifetime suspension from driving” and he reviewed the records and booking photo. *Id.* at 48. He indicated that the police report indicated Perkins was driving, pulled into a parking spot at a Taco Bell, and exited his vehicle. He stated that he reviewed video from the Taco Bell that day and recorded the video on a flash drive, which the court admitted. He testified that he was able to identify Perkins as the person driving the vehicle.

[13] The court admitted a certified copy of Perkins’s driver record which indicated that his license status was “HABITUAL TRAFFIC VIOLATOR – LIFE” and listed the total reinstatement fees due as \$2,000. Exhibits Volume I at 6.

[14] Perkins testified that he had prostate problems, did not refuse any drug test, and had permission to leave on March 12th. When asked if his driving status was “habitual traffic violator, lifelong suspended,” he stated that he could not answer the question and that he paid all his reinstatement fees and his “record is supposed to be taken care of on when it comes to driving.” Transcript

Volume II at 59-60. The court admitted medical records which listed a visit date in February 2018, stated “Prostate problems,” “c/o ‘only dribbling, not completing my stream,” and indicated a plan of “flomax .4mg daily.” Exhibits Volume I at 32. The court also admitted a Final Report listing Witham Toxicology Laboratory, a collection date of March 17, 2022, and a result of “Positive for Methamphetamine.” *Id.* at 31.

[15] The court found Perkins violated the conditions of probation and home detention by committing the offense of operating a vehicle after a lifetime suspension on September 14, 2022, and failed to provide samples for drug screens. The court stated that Perkins’s “records submitted shows a slow stream, not no stream over the number of times they tried to collect Mr. Perkins was just failing to provide one.” Transcript Volume II at 65. It further found that Perkins tested positive for methamphetamine. It stated that “for those three grounds, Mr. Perkins has violated the conditions of probation and home detention.” *Id.*

[16] That same day, the court entered an order under Cause No. 1048 finding Perkins violated the conditions of his probation for “committing a new offense and for technical violations” and ordered that he serve two years of his suspended sentence at the Department of Correction (“DOC”). Appellant’s Appendix Volume III at 50. The court also entered an order under Cause No. 1133 finding Perkins in violation of the conditions of community corrections and probation for “committing a new offense and for technical violations,” ordering that Perkins serve eight years as an executed sentence at the DOC and

that the sentence be served consecutive to his sentence under Cause No. 1048.  
*Id.* at 51.

### ***Discussion***

[17] Perkins argues that he “notified his supervisors” that he was homeless and “needed a few days to make arraignments [sic]” and he “was approved to move around for [a] few days.” Appellant’s Brief at 12. He asserts “his supervisor did not make good records of granting this permission.” *Id.* He contends that he appeared for all drug screens and attempted to urinate but was unable to do so due to a prostate problem. He asserts there was insufficient evidence of his saliva sample being tested at a lab. With respect to committing the new offense of being an habitual traffic violator, he argues that he had “paid all reinstatement fees and taken care of all outstanding driver’s status issues and was unaware of any issue.” *Id.* He also contends that the court’s sentence of ten years was an abuse of discretion.

[18] Ind. Code § 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.

[19] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained that “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Prewitt*, 878 N.E.2d at 188. When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans. denied*. As long as the proper procedures have been followed in conducting a probation revocation hearing, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence. *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999).

[20] The record reveals that Perkins committed the offense of operating a vehicle after a lifetime suspension, failed to provide samples for multiple drug screens, which each lasted an hour, and tested positive for methamphetamine. In light of the record, we cannot say the trial court abused its discretion in revoking Perkins’s probation and ordering that he serve two years of his previously



suspended sentence under Cause No. 1048 and eight years of his previously suspended sentence under Cause No. 1133.

[21] For the foregoing reasons, we affirm the trial court's order.

[22] Affirmed.

Bailey, J., and Weissmann, J., concur.