

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher M. Burdett,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

June 30, 2022

Court of Appeals Case No.
22A-CR-463

Appeal from the Ripley Superior
Court

The Honorable Jeffrey L. Sharp,
Judge

Trial Court Cause Nos.
69D01-2106-F6-112
69D01-2008-F6-119

Brown, Judge.

[1] Christopher M. Burdett appeals his sanction following the revocation of his probation and his sentence for escape as a level 6 felony as enhanced by his status as an habitual offender. We affirm.

Facts and Procedural History

[2] On August 11, 2020, the State charged Burdett under cause number 69D01-2008-F6-119 (“Cause No. 119”) with seven counts of invasion of privacy as level 6 felonies. Specifically, the State alleged that Burdett violated a no contact order or protective order, which prohibited him from any contact with M.S., in January, February, April, May, June, July, and August 2020. On January 26, 2021, Burdett and the State filed a Joint Motion in Tender of Conditional Plea Agreement pursuant to which Burdett agreed to plead guilty to Counts I and II, invasion of privacy as level 6 felonies, and the State agreed to dismiss the remaining counts. The State agreed that Burdett would receive a sentence of 730 days with 716 days suspended for Count I and 730 days with 730 days suspended for Count II. The agreement provided that the sentence would consist of “a total term of incarceration of 1460 days with 1,446 days suspended to probation.” Appellant’s Appendix Volume II at 53. The agreement also provided that Burdett would be placed on reporting probation.

[3] On January 26, 2021, the court sentenced Burdett pursuant to the agreement. Specifically, the court sentenced him to 730 days with 716 days suspended for Count I and 730 days with 730 days suspended for Count II and ordered the sentences to be served consecutive to each other.

- [4] On May 3, 2021, the State filed a Petition for Probation Violation Hearing and Order Issuing Warrant alleging that Burdett’s drug screen tested positive for methamphetamine and marijuana in April 2021. On June 8, 2021, the court entered an order granting the petition, revoking 545 days of Burdett’s previously-suspended sentence, and ordering him to serve 529 days on in-home incarceration.
- [5] On June 11, 2021, the State filed a “Request for Home Detention Violation and Motion to Convert Hearing & Petition for Probation Violation Hearing & Order Issuing Warrant” alleging that Field Officer Alisha Lord received a Tracker Strap Tamper Alert, she and Assistant Director Jenny Wise conducted a home visit at Burdett’s reported address and located a cut GPS bracelet in Burdett’s driveway, and Burdett was not at his residence. *Id.* at 78 (capitalization omitted). That same day, the court issued a warrant for Burdett’s arrest.
- [6] On June 11, 2021, the State charged Burdett under cause number 69D01-2106-F6-112 (“Cause No. 112”) with escape as a level 6 felony and alleged that he “did . . . violate a home detention order, and/or remove an electronic monitoring device and/or removed a GPS tracking device.” *Id.* at 81. The State also alleged that Burdett was an habitual offender.
- [7] On June 22, 2021, the State filed an “Amended Request for Home Detention Violation and Motion to Convert Hearing & Petition for Probation Violation Hearing” under Cause No. 119 alleging that Burdett tested positive for

methamphetamine and amphetamine. *Id.* at 95 (capitalization omitted). In August 2021, the State filed a “Second Amended Request for Home Detention Violation and Motion to Convert Hearing & Petition for Probation Violation Hearing” under Cause No. 119 alleging in part that Burdett had been arrested in Florida in the presence of M.K. *Id.* at 105 (capitalization omitted).

[8] On January 4, 2022, the court held a consolidated hearing in Cause Nos. 119 and 112. At the beginning of the hearing, the parties discussed a guilty plea, and the court stated:

So, and [Cause No. 119], seven hundred and thirty days will be revoked, based on the admission there, apply any credit to that and that probation terminates and then an open in [Cause No. 112] to the charge of Escape and Habitual Offender Sentencing Enhancement, with a cap of six.

Transcript Volume II at 2-3. Burdett’s counsel stated: “Yes, your honor.” *Id.* at 3. The court asked Burdett if it was his intention to admit to violating probation in Cause No. 119 based upon the new criminal offense in Cause No. 112, plead guilty to escape as a level 6 felony in Cause No. 112, and admit to being an habitual offender. Burdett answered affirmatively.

[9] Burdett admitted that he violated his probation under Cause No. 119. He admitted that Officer Lord located the cut GPS bracelet in his driveway and he was not at his residence. He admitted that he tested positive for methamphetamine and amphetamine in 2021 and was convicted of fraud-impersonation as a misdemeanor in the first degree in Florida. He also pled

guilty to escape as a level 6 felony and to being an habitual offender under Cause No. 112.

[10] The court found that Burdett understood the nature of the probation violation under Cause No. 119 and that there was a sufficient factual basis. It also entered judgment of conviction under Cause No. 112. The following exchange occurred:

BY THE COURT: . . . Let's see, he still has time to do on [Cause No. 119], is that correct.

[Prosecutor]: He is currently serving.

BY THE COURT: And [Defense Counsel], would you waive the thirty, does your client waive the thirty days?

[Defense Counsel]: Yes.

BY THE COURT: So, whenever you can get that Sentencing. He is going to be serving time on [Cause No. 119]. In [Cause No. 119], the Court will find he has knowingly or intentionally violated the terms of his probation and accept the agreement of the parties and revoke 730 days. Do we know credit on that today?

[Prosecutor]: So, in terms of his home detention, he was serving home detention . . .

BY THE COURT: Or do we just need to figure all of the sentencing out at the Sentencing Hearing?

[Prosecutor]: I think probably.

BY THE COURT: All right. So, revoked the 730 days and we will figure out the credit time and all of that at his Sentencing Hearing just to make sure that we are doing the two orders at the

same time. So, in fact if you just want to set this for disposition at the same time as the, I will hold off entering the actual sentence in [Cause No. 119]. We will just do it all at the same time, Mr. Burdett. Ok?

MR. BURDETT: Yes.

Id. at 10-12.

[11] On February 1, 2022, the court held a consolidated sentencing hearing. Janet Vanosdol, Burdett’s mother, testified that Burdett had been to jail before and “it doesn’t do any good” and he “needs to be in a rehab or facility that will help him understand why he is like he is.” *Id.* at 16. M.K. testified that Burdett was her boyfriend, she had started counseling, and he “needs to get into some counseling” and “needs help of his own.” *Id.* at 18. She also asked that the no contact order be lifted. Upon questioning by the prosecutor, M.K. indicated that Burdett had been convicted of being physically abusive to her and that she was not aware that Burdett had received any counseling. Upon questioning by Burdett’s counsel, she indicated that she was living and working in Florida for a period of time and “came up here, so [she] could be closer to” Burdett, and that she was attending “the program through Safe Passages.” *Id.* at 20.

[12] Burdett wrote the court a letter dated June 23, 2022, which asserted that he had sole custody of two children who reside with his seventy-year-old mother. He stated the children cannot “go to their mother [because] of her troubles with child services.” Appellant’s Appendix Volume II at 149. He also stated he had a business that he runs and would appreciate the chance to continue.

[13] The court stated in part: “I’ve given him chance, after chance, after chance.” Transcript Volume II at 31. It stated it would

convert the remaining five hundred and twenty-four days of In-Home and revoke the seven hundred and sixteen days of the probation. That is a total of one thousand, two hundred and forty days total, to be incarcerated. He will get credit for two hundred and one actual and that is four hundred and two with good time. That leaves a balance of eight hundred and thirty-eight days to be served incarcerated in [Cause No. 119] and that matter terminated. Converted five hundred and twenty-four on the In-Home. Revoked seven hundred and sixteen on the probation. So, one thousand two hundred and forty, give him credit for the four hundred and two, that is two hundred and one actual and leaves a remaining incarcerated time of eight hundred and thirty-eight days.

Id. at 31-32. That same day, the court entered an abstract of judgment under Cause No. 119 indicating that Burdett was sentenced to 524 days in the Department of Correction (“DOC”). It also entered an Order Granting Petition to Revoke Probation under Cause No. 119, which stated that it revoked 716 days of Burdett’s suspended sentence and gave him “credit for 402 days which is 201 good time days.” Appellant’s Appendix Volume II at 157.

[14] With respect to Cause No. 112, the court considered the “nature and circumstances, two days after being placed on In-Home, for everything the Court has already addressed, Mr. Burdett cut his bracelet, fled to Florida, was found in the Florida Keys and had to be transported back.” Transcript Volume II at 32. It also noted that he was found with M.K. and that there had been a no contact order and “continuing Invasions.” *Id.* The court found Burdett’s

criminal history as an aggravating factor. It found him to be a poor candidate for probation, considered his guilty plea as a mitigator, and found that the aggravators clearly outweighed the mitigators. It sentenced Burdett to 730 days for escape as a level 6 felony enhanced by 1,460 days due to his status as an habitual offender. The court ordered that the sentence be served consecutive to the sentence in Cause No. 119.

Discussion

I.

[15] With respect to his sentence under Cause No. 119, Burdett argues that he was not sentenced in accordance with the agreement he reached with the State. He contends that the parties agreed he “would have two (2) years of his previously suspended sentence revoked, have his credit time applied to that sentence, and have the remainder of his probation terminated” in Cause No. 119. Appellant’s Brief at 15. He asserts the trial court “ordered 524 days of [his] in home detention converted, revoked 713 days of [his] probation, gave him 402 credit days, and sentenced him to serve 838 days of his sentence” in Cause No. 119. *Id.* at 16. In other words, he states that “[t]he trial court revoked all of [his] suspended sentence, converted all of [his] home detention time, and ordered [him] to serve his entire sentence.” *Id.*

[16] The State argues that, “[o]n the first occasion that Burdett violated his probation in [Cause No. 119], 545 days of his suspended sentence was converted to home incarceration.” Appellee’s Brief at 14. It asserts that “[t]he

new agreement reached by the parties for the probation violation did not encompass this home detention time, but rather it was agreed that 730 of the days still remaining in his suspended sentence would be executed to the DOC.”

Id. It contends that “[b]ecause the agreement did not contemplate disposal of Burdett’s home detention time, it was not a violation of the parties’ agreement to change the placement of his remaining time to the DOC.” *Id.*

[17] Upon finding that a probation violation occurred, the trial court generally may impose one 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 year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. *See* Ind. Code § 35-38-2-3(h).

[18] Generally, 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. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* However, “[i]f the parties enter into a plea agreement that calls for the trial

court to treat a probation violation in a particular manner, once accepted, the trial court is thereby bound.” *Jackson v. State*, 968 N.E.2d 328, 334 (Ind. Ct. App. 2012) (citing Ind. Code § 35-35-3-3(e)). We also note that a defendant generally is not entitled to serve a sentence in either probation or a community corrections program. *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right. *Id.* (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*).

[19] The record does not contain a written plea agreement. The court and the parties’ discussion at the January 4, 2022 hearing did not mention the June 8, 2021 order revoking 545 days of Burdett’s sentence and requiring him to serve 529 days on in-home incarceration due to a prior probation violation. Based on the record, we cannot say there was any agreement related to the prior sanction or that the court was precluded from addressing the sanction. Under these circumstances, we find no abuse of discretion.

II.

[20] The next issue is whether Burdett’s sentence under Cause No. 112 is inappropriate in light of the nature of the offense and his character.¹ Burdett

¹ Burdett appears to focus on his sentence under Cause No. 112. To the extent he argues that his sentence under Cause No. 119 was inappropriate, we note that the Indiana Supreme Court has held that Ind. Appellate Rule 7(B) is not the correct standard to apply when reviewing a sentence imposed for a probation violation and that our review is confined to the abuse of discretion standard. *See Prewitt*, 878 N.E.2d at 188; *see also Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008) (noting that a remedy under Ind. Appellate Rule 7(B) is not available on appeals from a probation revocation hearing); *Milliner v. State*, 890 N.E.2d 789, 793 (Ind.

argues that there was no evidence that his conduct was intended to cause harm or actually caused harm. He asserts he admitted that he had made a mistake and was willing to satisfy his debt to society. He also points to the testimony of M.K. and his mother.

[21] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[22] Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-8(i) provides that the court shall sentence a person found to be an habitual offender to an additional fixed term that is between two and six years for a person convicted of a level 6 felony and the additional term is nonsuspendible.

[23] Our review of the nature of the offense reveals that Burdett was on probation when Officer Lord located his cut GPS bracelet in his driveway. Burdett was

Ct. App. 2008) (noting that we do not review probation revocations under Ind. Appellate Rule 7(B) and that the court did not abuse its discretion in revoking the defendant’s probation), *trans. denied*. To the extent Burdett suggests the trial court abused its discretion in imposing the sanction under Cause No. 119, we cannot say that reversal is warranted in light of his agreement with the State and the multiple probation violations.

later arrested in Florida in the presence of M.K., the individual listed in the protective order.

[24] Our review of the character of the offender reveals that Burdett pled guilty to escape as a level 6 felony and being an habitual offender. As an adult, Burdett was convicted of possession of hashish with a prior drug offense conviction² as a level 6 felony in 1997; four counts of check deception as class A misdemeanors in February 2003; indecent exposure as a class C misdemeanor in August 2003; eight counts of check deception as class A misdemeanors in October 2003; theft as a level 6 felony in 2006; domestic battery resulting in moderate bodily injury as a level 6 felony and invasion of privacy as a class A misdemeanor in 2020; two counts of invasion of privacy as level 6 felonies in 2021 under Cause No. 119; and “False ID Given to Law Enforcement Officer-Misd 1st Degree” in Florida in 2021. Appellant’s Appendix Volume II at 142. The presentence investigation report (“PSI”) states that he “has been placed on Probation a minimum of eight times, with a minimum of eleven Probation Violations filed.” *Id.* at 143.

[25] The PSI indicates that Burdett reported being a “daily user” of marijuana from ages fourteen to nineteen and his last use of marijuana was in August 2021. *Id.* at 144. He reported trying cocaine “‘a couple of times’ in the last [sic] 2000s,”

² The presentence investigation reports indicates that Burdett was charged with possession of marijuana as a class B misdemeanor in 1993 but lists the disposition as “Unknown.” Appellant’s Appendix Volume II at 139. It also states that a probation violation under that cause was filed in September 1994.

trying methamphetamine at age forty-four, using methamphetamine about twelve times, and using non-prescribed Xanax twice. *Id.* The PSI states that Burdett's overall risk assessment score using the Indiana Risk Assessment System places him in the high risk to reoffend category.

[26] After due consideration, we conclude that Burdett has not sustained his burden of establishing that his sentence of 730 days enhanced by 1,460 days for his status as an habitual offender is inappropriate in light of the nature of the offense and his character.

[27] For the foregoing reasons, we affirm Burdett's sentence.

[28] Affirmed.

Mathias, J., and Molter, J., concur.