MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Skylar L. McGraw,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 20, 2023

Court of Appeals Case No. 23A-CR-60

Appeal from the Allen Superior Court

The Honorable Samuel Keirns, Magistrate

Trial Court Cause No. 02D06-2112-F5-488

Memorandum Decision by Judge Bailey
Judges Crone and Brown concur.

Bailey, Judge.

Case Summary

[1] Skylar L. McGraw appeals the trial court's determination that she violated the terms of her probation and its sanction of probation revocation. We affirm.

Issues

[2] McGraw raises the following two issues on appeal:

I. Whether the State provided sufficient evidence to prove that McGraw had violated the terms of her probation.

II. Whether the trial court abused its discretion when it ordered McGraw to serve the remainder of her previously suspended sentence as a sanction for her probation violation.

Facts and Procedural History

[3] On August 31, 2022, McGraw pleaded guilty to Battery by Means of a Deadly Weapon, as a Level 5 felony,[1] pursuant to a plea agreement. The trial court sentenced McGraw to four years, suspended, in the Department of Correction ("DOC"), with three of those years to be served on probation. As a special condition of probation, McGraw was ordered to serve the first six months of

[1] Ind. Code § 35-42-2-1(c)(1), (g)(2).

probation in the Community Corrections Residential Services Program and the next year of probation in the Community Control Home Detention Program. The terms of McGraw's probation included the standard conditions that she "shall behave well and report for supervision as instructed," maintain full-time employment, and pay certain fees. App. at 29. In addition, as a condition of her participation in the Allen County Community Corrections ("ACCC") Residential Program, McGraw signed a contract ("the Contract") under which she agreed, in relevant part, that she would "not use verbally aggressive/abusive language to staff or other participants." Ex. at 29. McGraw further acknowledged, by her signature and initials on the Contract, that her failure to comply with any of the Contract's conditions "may result in sanctioning, arrest, a [probation] violation [petition] being filed with the Court, and/or termination from the ACCC Residential Program." *Id*.

[4] On October 18, 2022, McGraw met with her community corrections case manager, Morgan Hilker. At that meeting, Hilker asked McGraw to provide copies of her pay stubs as proof of employment, but McGraw initially refused to do so. McGraw was directed to complete forms stating her goals. McGraw stated that her long-term goal was "to stay out white folks['] face[s]," and she would know that she reached that goal when there "ain't no white folk gonna be in my business asking me for a damn thing." Ex. at 57; Tr. at 45.

[5] On October 22, Hilker received an incident report regarding McGraw from Chloe Geans, a residential service officer with community corrections. Geans had turned on the overhead lights at the residential facility to look for anklet

chargers. Geans then overheard McGraw loudly stating on the telephone and in the presence of other residents, "This bitch is bored, instead of searching everybody like she is supposed to[,] the lazy bitch cut the brights on." App. at 31; Tr. at 70. On November 3, Hilker received another incident report from Geans stating that Geans had overheard McGraw complaining to another resident in an "aggressive tone" about Hilker being late for an appointment with McGraw; specifically, McGraw said, "This bitch is never on time. She better not wake me up." App. at 32; Tr. at 67.

[6] On November 5, McGraw sent an email to Hilker along with a copy of McGraw's pay stub. The subject line of the email stated: "Here you go master." App. at 32; Ex. at 58. The email further stated, "You are too far in my business ma'm[,] and I think there are some boundaries that need to be discussed IMMEDIATELY!! Also this [pay] check went to my bills so don't expect anything but maybe $5 if that." Ex. at 58 (emphasis in original).

[7] On November 7, Hilker received another incident report from the residential facility regarding McGraw. While at the facility, McGraw was speaking loudly on the telephone and hitting the wall with her hand. McGraw yelled "fuck this place" and was speaking so loudly that she could be heard by other residents. Tr. at 80. Following the phone call, Residential Manager Cody Fry attempted to speak to McGraw about McGraw's concerns. McGraw yelled and was "verbally aggressive" with Fry. *Id*. at 86. Fry asked McGraw to lower her voice, but McGraw continued to yell. Fry escorted McGraw to a private cell

for a "cooling off period," and, as McGraw entered the cell, she stated the words "fat bitch." *Id*. at 87.

[8] On November 9, 2022, Probation Officer Mike Biltz filed a verified petition to revoke McGraw's probation, citing McGraw's "fail[ure] to maintain good behavior" on the dates of October 18 and 22 and November 3, 5, and 7 as probation violations. App. at 31-32. On December 15, the trial court held a contested hearing on the petition to revoke probation. The State called six witnesses, including Hilker, Geans, and Fry. At the conclusion of the hearing, the court ruled from the bench that it was revoking McGraw's suspended sentence and committing her to the DOC for four years.

[9] In so ruling, the court summarized the evidence of each incident in October and November and stated, "I'd say that any one of these in a vacuum by itself as a single incident may not be terribly significant, but what's laid out here, Ms. McGraw[,] is a pattern of behavior an[d] comments that speak of your general attitude towards staff members and, frankly, the sentence that you agreed to in your plea agreement." Tr. at 94. The court stated that McGraw's stated goal of getting out of the system was "acceptable" but that her statements regarding "white folks" and calling Hilker "master" were intentionally "inflammatory." *Id*. at 95. The court further found that McGraw's statements referring to various staff as "bitch," "lazy bitch," and "fat bitch," although not necessarily stated to the staff members directly, were nevertheless directed toward staff members and intended to be heard—and actually were heard—by staff and/or residents. *Id*. The trial court stated to McGraw, "You don't get to act this way

toward people who are doing their job[s] as instructed by this Court." *Id*. McGraw now appeals.

Discussion and Decision

Standard of Review

[10] "Placement under either probation or a community corrections program is 'a matter of grace and a conditional liberty that is a favor, not a right.'"[2] *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind.1999)). We review probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law." *Id*. (citations omitted). "As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses." *Jenkins v. State*, 956 N.E.2d 146, 148 (Ind. Ct. App. 2011) (citation and quotation omitted), *trans. denied*.

[11] A probation revocation proceeding is a two-step process. *Heaton*, 984 N.E.2d at 616. First, the trial court must determine whether the preponderance of the

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[2] "Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction and both are made at the sole discretion of the trial court." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999); *see also* I.C. § 35-38-2.6-3(a). Thus, for purposes of today's analysis, "'probation' is not distinguishable from 'community corrections,' and the terms will be used interchangeably." *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015).

evidence showed that a probation violation occurred. *Id*.; I.C. § 35-38-2-3. Second, the trial court must determine whether the probation violation warrants revocation of probation or some lesser sanction. *Heaton*, 984 N.E.2d at 616.

Probation Violation

[12] McGraw challenges the trial court's ruling that she violated the terms of her probation. One of the terms of McGraw's probation was that she "shall behave well." App. at 29. As our Supreme Court has noted, Indiana courts "have long held that 'good behavior' as a term or condition of probation is equivalent to 'lawful conduct.'" *State v. Schlechty*, 926 N.E.2d 1, 7 n.6 (Ind. 2010) (noting trial courts continue to impose the probation condition of "good behavior" or "behaving well," despite the fact that such language no longer appears in the probation statutes). Here, there is no allegation that McGraw engaged in unlawful behavior; therefore, her actions were not a violation of the probation term that she "behave well." App. at 29; *see Schleckty*, 926 N.E.2d at 7 n.6.

[13] However, a defendant's placement in community corrections may also be revoked, and the defendant may be committed to the DOC for the remainder of her sentence, if the defendant "violates the terms of the placement" in community corrections. I.C. § 35-38-2.6-5; *see also Pavey v. State*, 710 N.E.2d 219, 221 (Ind. Ct. App. 1999) ("[W]e will affirm the revocation of placement in a community corrections program if, considering only the probative evidence and reasonable inferences therefrom, there is sufficient evidence supporting the

conclusion that the individual within the program is guilty of violating any condition of the program.").

[14] It was a condition of McGraw's probation that she participate in the ACCC Residential Program, App. at 29, and that program required that McGraw "not use verbally aggressive/abusive language to staff or other participants." Ex. at 29. McGraw signed that contract and initialed the specific provision regarding aggressive/abusive language. *Id*. Fry also testified that the program's Resident Handbook contains a requirement that residents "be[] respectful, talk[] in a respectful tone, [and] not curse[]." Tr. at 87-88. Yet the preponderance of the evidence established that McGraw repeatedly referred to community corrections staff as "bitch," spoke to staff in a loud, aggressive tone even after being asked to refrain from doing so, and used inflammatory language to suggest that staff was treating her poorly due to her race. The trial court did not abuse its discretion when it found that McGraw violated the terms and conditions of her probation. McGraw's contentions to the contrary are requests that we reweigh the evidence and/or judge witness credibility, which we may not do. *See Jenkins*, 956 N.E.2d at 149.

Probation Revocation

[15] McGraw also challenges the trial court's decision to sanction her probation violation by revoking her probation placement in community corrections and

ordering her to serve the remainder of her sentence in the DOC. Indiana Code Section 35-38-2-3(h)[3] 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.

Our Supreme Court has held that this statute "permits judges to sentence offenders using any one of or any combination of the enumerated powers." *Prewitt*, 878 N.E.2d at 187. And, while probationers must be given the opportunity to present mitigating factors, *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008), the trial court is not required to consider aggravating and mitigating factors when deciding whether to revoke probation, *Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Moreover, a single violation of a condition of

[3] *See also* I.C. § 35-38-2.6-5 (regarding revocation of placement in community corrections).

probation is sufficient to permit the trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

[16] Here, the court found multiple instances of McGraw's violation of the terms of her placement in community corrections; therefore, it acted within its discretion when it chose to sanction those violations with probation revocation. *See* I.C. § 35-38-2-3(h); I.C. § 35-38-2.6-5. McGraw seems to contend that the trial court erred in weighing the mitigating circumstances by failing to give sufficient weight to her mental health issues and lack of mental health treatment. However, a trial court need not consider mitigating and aggravating factors at all. *Porter*, 117 N.E.3d at 675. Moreover, McGraw's contentions amount to requests that we reweigh the evidence or judge witness credibility, which we cannot do. *Jenkins*, 956 N.E.2d at 148. Given that a court may revoke probation for a single probation violation, the trial court was well within its discretion when it sanctioned McGraw by ordering her to serve the remainder of her suspended sentence in the DOC. *Pierce*, 44 N.E.3d at 755.

Conclusion

[17] The trial court did not abuse its discretion when it found that McGraw had violated the terms of her probation and sanctioned that violation by a revocation of probation.

[18] Affirmed.

Crone, J., and Brown, J., concur.