MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Antonio Dion Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 22, 2023

Court of Appeals Case No. 22A-CR-2641

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause Nos. 71D03-1603-F6-279 71D03-1708-F6-803

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Antonio Dion Williams appeals the revocation of his probation. We affirm.

Facts and Procedural History

[2] In November 2016, the trial court issued an Order on Plea Hearing indicating that Williams pled guilty pursuant to a plea agreement to operating a vehicle as an habitual traffic violator as a level 6 felony under cause number 71D03-1603-F6-279 ("Cause No. 279"). In December 2016, the court sentenced him to twenty-two months. In January 2017, the court issued an order suspending his sentence and placing him on probation for one year. In March 2017, the State filed a petition to revoke probation alleging that he committed battery as a class B misdemeanor.

[3] In February 2018, the trial court issued an Order on Plea Hearing indicating that Williams pled guilty to operating a vehicle as an habitual traffic violator as a level 6 felony under cause number 71D03-1708-F6-803 ("Cause No. 803"). On May 10, 2018, the court entered an order sentencing him to two years under Cause No. 803 and revoking his probation under Cause No. 279. In May 2020, Williams filed a motion for modification of sentence under Cause Nos. 279 and 803, and on August 18, 2020, the court entered a Modification Order stating that his sentence in each case was modified and ordered that he be released from incarceration and placed on probation for the remainder of his sentences.

[4] On May 13, 2021, Probation Officer Jodi Magalski filed a "2nd Violation of Probation Petition" alleging Williams committed a new criminal offense while on probation, failed to report to probation, had a positive urine drug screen,

failed to submit to a urine drug screen as directed, and failed to pay fees. Appellant's Appendix Volume II at 73. On May 10, 2022, Probation Officer Magalski filed an "Addendum Violation of Probation Petition" alleging Williams violated the condition of his probation which provided that a violation of any law may be considered a violation of probation. *Id*. at 75.

[5] On May 11, 2022, the court held a hearing at which Williams indicated he would be hiring an attorney and the court set a hearing for June 9, 2022.[1] An entry on June 9, 2022, in the chronological case summary ("CCS") for Cause No. 279 states that a hearing was held, Williams indicated he was retaining private counsel, and the court continued the hearing on the violation to July 11, 2022. A CCS entry on July 11, 2022, states that a hearing was held, Williams was still retaining private counsel, and the hearing on the violation was continued to August 8, 2022. An August 8, 2022 CCS entry states that a hearing was held and the hearing on the violation was continued to September 13, 2022. A September 13, 2022 CCS entry states a hearing was held and an evidentiary hearing was set for September 30, 2022. A CCS entry on September 30, 2022, states: "Hearing held. Defendant appears after hearing. Court orders the Defendant taken into custody for not being in communication with his attorney and being late. PTR evidentiary hearing set for 10-7-22 at 9:00 a.m." *Id*. at 17.

[1] The record contains a transcript of only the May 11 and October 7, 2022 hearings.

[6] On October 7, 2022, the trial court held an evidentiary hearing. Officer Garrett Baresel testified that, at approximately 1:40 a.m. on April 14, 2021, he observed a vehicle swerve over from its lane and he initiated a traffic stop. He indicated that he smelled an odor of an alcoholic beverage coming from the vehicle and Williams had slurred speech and bloodshot eyes and failed two of three standardized field sobriety tests. He also testified that Williams handed him an identification card which falsely identified him as Jermaine Stewart. The State introduced an information alleging that Williams, on or about April 14, 2021, committed the offenses of operating a vehicle with an ACE of .15 or more as a class A misdemeanor, operating a vehicle while intoxicated endangering a person as a class A misdemeanor, operating a vehicle with a Schedule I or II controlled substance or its metabolite in the blood as a class C misdemeanor, and false informing as a class A misdemeanor. The prosecutor stated "[p]ass the witness, your Honor," and the court asked "[Williams's counsel], any questions?" Transcript Volume II at 17. Williams's attorney answered: "Of the officer, no, sir." *Id*.

[7] South Bend Police Officer Aaron Omanson testified that, on May 4, 2022, he observed a Chevrolet with a paper license plate, learned the plate actually belonged to a Toyota, and initiated a stop. He testified that Williams was driving the vehicle and identified himself as Aramis Long. He testified officers discovered a plant-like material which later tested positive for THC, a straw with residue which field-tested positive for cocaine, and a scale with a white powder on it which field-tested positive for cocaine. The State introduced an

information alleging Williams, on or about May 4, 2022, committed the offenses of possession of marijuana as a class B misdemeanor, false informing as a class B misdemeanor, and possession of paraphernalia as a class C misdemeanor. The prosecutor stated "[p]ass the witness," and the court asked "[Williams's counsel], any questions?" *Id*. at 22. Williams's attorney answered: "There are none, sir." *Id*.

[8] The prosecutor indicated he did not have further evidence to submit, and the court stated: "All right. The State rests. [Williams's counsel], any evidence?" *Id*. at 23. Williams's attorney replied: "There is none available, sir." *Id*. The court found Williams violated the conditions of his probation.

[9] Williams's counsel requested "disposition be forestalled long enough that [he] might gather what information [he could] from his other attorneys." *Id*. at 24. The court asked "[s]o you want time so you can put together some sort of recommendation," and Williams's attorney responded affirmatively. *Id*. at 25. The prosecutor argued the court "modified [Williams] out of the" Department of Correction ("DOC") and "what did he do? Well, he gets out, and he commits two misdemeanor offenses where he could have been charged as felonies." *Id*. He argued "I think it is pretty clear . . . that he does not want to take advantage of anything that Probation has to offer," "I don't think he would take advantage of anything that community corrections would offer," and "I don't understand what setting this out for disposition would really accomplish here given his criminal history and what the basis of the violation is unless the Court wants to just order a credit time report and see how much time he has left

in the cases." *Id*. at 25-26. He further indicated the State's position was for the previously suspended sentences in both cases to be revoked.

[10] Probation Officer Magalski stated: "It does not appear as though Mr. Williams is really appropriate for probation supervision. . . . As the attorney stated, he committed multiple new offenses while on probation supervision. At the minimum DuComb work release may be an appropriate sentence or if your Honor chooses to execute the sentences at DOC." *Id*. at 26. Williams's counsel indicated he did not have any questions for Probation Officer Magalski.

[11] Williams's counsel stated "I believe [the prosecutor] was appropriate in the request for, if nothing else, an updated credit report," and the court said: "Well, we don't have to set the case over for that. All right. So, Mr. Williams, anything you want to tell me?" *Id*. at 27. Williams stated "I was just trying to talk about the LaPorte case," "I don't have no public defender in that case," "[t]hey told me that . . . I had to hire my own lawyer," "I go to court - they pushed it back to January 7," and "[s]o I'm supposed to be meeting with [another attorney] on that day." *Id*. The court asked "[a]ll right. Is that all you want to tell me?" *Id*. Williams answered: "Yeah, that's what I wanted to say." *Id*. The court stated "I did modify your sentence in August of 2020," "[s]o I put you on probation," and "I think you've reached the end of the line here." *Id*. at 28. The court ordered Williams to serve his previously suspended sentences in Cause Nos. 279 and 803 and Probation to provide a credit time report in each case.

Discussion

[12] Williams argues that he requested a postponement of his sentencing to allow him to prepare arguments for an alternative sanction, the probation officer suggested that the court consider work release, he was not granted the postponement he sought, and the result was that "he could not cogently present evidence in mitigation before his sentencing." Appellant's Brief at 9. He requests remand "to allow [him] the opportunity to present evidence in mitigation and be evaluated for a community corrections placement in work release." *Id*. at 12. The State maintains that Williams had ample time to prepare mitigating evidence, the evidentiary hearing was held nearly five months after the initial hearing on the violations, the hearing was continued four times, Williams had the opportunity to present evidence but failed to do so, and the court was not required to hold a bifurcated hearing.

[13] 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*. Probation revocation implicates a defendant's liberty interest, which entitles him to some procedural due process. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593 (1972)). The requirements of due process include the opportunity to present evidence and the right to confront and cross-examine adverse witnesses. *Id*.

[14] Probation revocation is a two-step process. *Id*. at 537. First, the court must make a factual determination that a violation of a condition of probation

occurred. *Id*. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id*. Ind. Code § 35-38-2-3 requires the court to hold a hearing concerning the alleged violation and provides that the person is entitled to confrontation, cross-examination, and representation by counsel. *Id*. When a probationer admits to the violation, the procedural due process safeguards and an evidentiary hearing are not necessary. *Id*. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id*. However, "even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation." *Id*. (quoting *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008) (citation omitted)).

[15] The record reveals the court held an initial hearing on May 11, 2022, the matter was continued multiple times, Williams appeared after the scheduled hearing on September 30, 2022, and the court eventually held the evidentiary hearing on the allegations that Williams violated the conditions of his probation on October 7, 2022. At the evidentiary hearing, the State presented the testimony of Officers Baresel and Omanson regarding their traffic stops involving Williams in April 2021 and May 2022, and Williams's counsel had the opportunity to cross-examine the officers. Further, after the State rested, Williams's counsel declined to present evidence. Williams was asked if he had anything to say, and, after he discussed another case, the court asked him if that was all he wanted to tell the court, and Williams responded affirmatively. The

court was able to consider the previous modification to Williams's sentences and his placement on probation, the testimony of Officers Baresel and Omanson, the timing and nature of the probation violations, Probation Officer Magalski's comments, and the attorneys' arguments. Based on the record, we cannot say that Williams was not given an opportunity to offer mitigating evidence or that he was entitled to a further hearing. *See Vernon*, 903 N.E.2d at 537 ("[T]he record shows that Vernon was afforded an evidentiary hearing. And, he points to no authority showing that he is entitled to another one. *See Morrissey*, 408 U.S. at 488, 92 S. Ct. 2593 ('The [defendant] must have *an opportunity* to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.') (emphasis added). If the trial court had proceeded straight to the second step, *then* Vernon would have been entitled to present evidence that suggested that the violation did not warrant revocation. However, Vernon was afforded this opportunity during the evidentiary hearing at which he testified that he did not commit all the crimes with which he was charged.").

[16] For the foregoing reasons, we affirm the trial court.

[17] Affirmed.

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