

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Harmon L. Jones, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 22, 2021
Court of Appeals Case No.
21A-CR-863

Appeal from the Noble Circuit
Court
The Honorable Michael J. Kramer,
Judge
Trial Court Cause No.
57C01-1608-F5-49

May, Judge.

[1] Harmon L. Jones, Jr., appeals following the revocation of his probation. He presents one issue for our review, which we restate as whether the trial court sufficiently stated its reasons for revoking Jones' probation. We affirm.

Facts and Procedural History

- [2] On May 18, 2017, the trial court entered judgment of conviction against Jones for Level 5 felony burglary.¹ The trial court sentenced Jones to a term of five years, with sixteen months executed in the Indiana Department of Correction ("DOC") and forty-four months suspended to probation. Jones was released from DOC and began serving his probation on October 18, 2018. Noble County Probation Officer Danielle Iovino was assigned to supervise Jones on probation.
- [3] On August 27, 2019, Officer Iovino filed a probation violation report alleging several violations, including: (1) Jones had failed to appear for two of his scheduled appointments with her; (2) Jones had repeatedly failed to appear for drug screens and provided samples that tested positive for illegal substances when he did appear; and (3) Jones had lied to Officer Iovino about his participation in a substance abuse recovery program. On November 4, 2019, Officer Iovino filed a second probation violation report alleging the State had

¹ Ind. Code § 35-43-2-1.

charged Jones with Level 6 felony theft.² Jones admitted the violations at a hearing on August 24, 2020, and the trial court ordered Jones to serve an additional eighteen months of probation.

- [4] On September 17, 2020, Jones attended a meeting at the probation office with Officer Iovino. Officer Iovino noticed that Jones was “very skinny” and displayed “physical signs of methamphetamine use,” but Jones denied using methamphetamine. (Tr. Vol. II at 25.) Officer Iovino then decided to have Jones perform a drug screen, and she asked Probation Officer Blake Miller to supervise Jones’ drug screen. Officer Miller gave Jones a bottle in which to deposit his sample and a bag for the bottle and he followed Jones into the drug screen bathroom. After Jones finished depositing his sample, Officer Miller saw a white band around Jones’ waist. The band was about three inches wide and extended around Jones’ entire waistline. Officer Miller began to suspect that the white band was part of a prosthetic device³ and that Jones had used the device to provide a false sample. (*Id.* at 35.) Jones told Officer Miller that the white band was a back brace. Officer Miller then instructed Jones to take the item off and place it on the back of the toilet, but Jones refused to remove the white band. Jones placed the full bottle of urine on the drug screen table and “stormed out of the building[.]” (*Id.* at 36.) Officer Miller chose not to have

² Ind. Code § 35-43-4-2.

³ Officer Miller referred to the device as a “whizinator,” and he described it as “a white band with a fake penis on it.” (Tr. Vol. II at 35.) He further elaborated that a “whizinator” holds a fluid (like another individual’s urine) and when pressed, “releases the urine as if you are simulating an actual drug screen.” (*Id.*)

the sample tested because he believed it was “synthetic” and because Jones did not provide the requisite signatures before leaving the building so that the sample could be sent to an outside laboratory for testing. (*Id.*)

- [5] As a result of these events, Officer Iovino filed a report on September 24, 2020, alleging that Jones violated the terms of his probation by disobeying Officer Miller’s instructions during the drug screen, that Jones had lied to Officer Iovino when he denied recent drug use, and that Jones was not adequately participating in his assigned substance abuse therapy. The trial court then held a fact-finding hearing on April 14, 2021. At the conclusion of the hearing, the trial court stated:

Okay, I will find that there has been a violation of terms of probation as set out in the [September 24, 2020⁴] probation violation report, and considering . . . that there had been a prior violation of probation in the past and Mr. Jones was continued on probation but I think considering everything I do know that the problems that have been caused by COVID and the justice system are real um, but within our probation department they have a consistent uh, one policy for every probationer regardless of who’s supervising. So, I think considering everything I’m going to revoke the probation and order that Mr. Jones serve the suspended sentence. I will recommend to him for purposeful incarceration, and which is basically completing a program uh, will be reported back to the Court with an opportunity for

⁴ An additional probation violation report was filed the day before the fact-finding hearing alleging Jones had committed a new offense, but the trial court determined the April 13, 2021, probation violation report was moot considering its finding that Jones had violated the terms of his probation as alleged in the September 24, 2020, probation violation report.

modification at that point. But I'm putting the ball in Mr. Jones's court at this point.

(*Id.* at 50) (errors in original). The trial court then issued a written order that stated: "The Court finds that the Defendant has knowingly violated the terms of probation as ordered. The Court NOW ORDERS the balance of the Defendant's executed sentence of 44 months to be served in the [DOC] with credit for 51 days served." (App. Vol. II at 115.)

Discussion and Decision

[6] Our standard of review following the revocation of probation is well-settled:

The State need only prove the alleged violations by a preponderance of the evidence, we will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses, and if there is substantial evidence of probative value to support the court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation.

Johnson v. State, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016).

[7] Probation is a function of the trial court's grace, not something to which the defendant is entitled. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. Nevertheless, a defendant must be afforded some degree of due process before his probation may be revoked because revocation implicates a liberty interest. *Id.* These minimal due process requirements include:

(a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking probation.

Piper v. State, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*.

“Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation.” *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008).

- [8] Jones argues the trial court violated his due process rights because “it revoked his probation without providing a written statement as to the evidence it relied on and its reasons for revoking [his] probation.” (Appellant’s Br. at 8.) As our Indiana Supreme Court has explained: “Due process requires that the reasons for revoking probation be clearly and plainly stated by the sentencing judge not merely to give appellant notice of the revocation, but also to facilitate meaningful appellate review.” *Medicus v. State*, 664 N.E.2d 1163, 1164 (Ind. 1996). “While it is not the preferred manner of fulfilling the written statement requirement, the right to a written statement is satisfied if the transcript of the evidentiary hearing present in the record contains a clear statement of the trial

court's reasons for the revocation." *Terpstra v. State*, 138 N.E.3d 278, 286 (Ind. Ct. App. 2019), *trans. denied*.

[9] Jones is correct that the trial court did not lay out its findings in detail, but the trial court did state at the conclusion of the factfinding hearing that it found Jones had violated the terms of his probation as asserted in the September 24, 2020, probation violation report. That report initially alleged that while a condition of Jones' probation required him to truthfully answer questions from his probation officer, he lied to Officer Iovino when he denied recent drug use. Second, while a condition of Jones' probation required him to submit to drug and alcohol tests, Jones did not cooperate with Officer Miller in performing a urine drug screen. Thirdly, the probation violation report alleged Jones failed to adequately participate in recommended substance abuse treatment programs even though a condition of Jones' probation required him to do so.

[10] At the fact-finding hearing, Officer Miller testified regarding Jones' failure to cooperate in performing a urine drug screen on September 17, 2020. Officer Iovino testified that even though Jones displayed physical signs of drug use at the time of his visit on September 17, 2020, he denied recently using illegal drugs. She also testified that while Jones self-reported completion of a substance abuse program, he had not received a certificate of completion for the program because he had neglected to turn in a completed copy of his program workbook. She also testified that a therapist reached out to her because Jones failed to return the therapist's calls to set up individual therapy sessions, and Jones himself testified that he had not scheduled any individual therapy

sessions. Thus, looking at the probation violation report, the transcript of the fact-finding hearing, and the written order revoking Jones' probation, we are satisfied that the trial court produced a sufficient written record for us to meaningfully review the reasons and evidence underlying the trial court's revocation order. We therefore hold that Jones' due process rights were not violated in the revocation of his probation. *See Hubbard v. State*, 683 N.E.2d 618, 621 (Ind. Ct. App. 1997) (Trial court's order revoking probation "provides the reasons for and the hearing transcript provides the evidence underlying, the trial court's revocation of Hubbard's probation. Both documents provide an adequate basis for appellate review and, thus, are adequate to satisfy the separate writing requirement.").

Conclusion

[11] Jones' due process right to a written statement of the evidence relied upon by the factfinder and the reasons for revoking his probation was satisfied. Even though the trial court's written revocation order lacked detail, the trial court stated on the record at the conclusion of the factfinding hearing that the State had proven the violations it alleged in the probation violation report and testimony at the factfinding hearing provided evidence to support this finding. Therefore, we affirm the trial court's order revoking Jones' probation.

[12] **Affirmed.**

Vaidik, J., and Molter, J., concur.