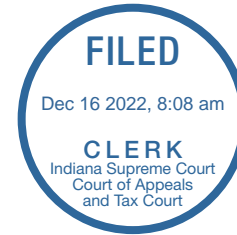


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Caylen J. McPherson
Hamilton Law, LLC
Auburn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Charles Harrison,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 16, 2022

Court of Appeals Cause No.
22A-CR-1246

Appeal from the DeKalb Superior
Court

The Hon. Adam Squiller, Judge

Trial Court Cause No.
17D01-2007-F6-185

Bradford, Chief Judge.

Case Summary

- [1] Two years ago, the State charged Charles Harrison with several drug-related charges, after which he entered into a plea agreement. In 2021, the trial court sentenced Harrison to a period of incarceration and probation. During Harrison's probationary term, the State filed a petition to revoke probation and several supplemental petitions based on: (1) Harrison's testing positive for illegal drugs, (2) his failure to update his address and to appear for a probation appointment, (3) his failure to obtain a substance-abuse assessment, and (4) his refusal to participate in a drug screen. The trial court found that Harrison had violated the terms of his probation and revoked his probation. Harrison argues that the evidence is insufficient to support the revocation. We affirm.

Facts and Procedural History

- [2] In July of 2020, the State charged Harrison with Level 6 felony possession of methamphetamine, Class A misdemeanor possession of a controlled substance, Class A misdemeanor possession of marijuana, Class A misdemeanor resisting law enforcement, Class C misdemeanor possession of paraphernalia, and Class C misdemeanor refusal to identify himself. Harrison entered into a plea agreement, under the terms of which he pled guilty to Level 6 felony possession of methamphetamine, Class A misdemeanor resisting law enforcement, and Class C misdemeanor refusal to identify himself. In May of 2021, the trial court sentenced Harrison to 540 days of incarceration in the DeKalb County Jail with ninety days executed and 450 days suspended to probation.

- [3] Harrison began probation with DeKalb County in May of 2021, during which time DeKalb County required that he, among other things, not use any controlled substances without a prescription, notify his probation officer of address changes, complete substance-abuse treatment, and submit to drug and alcohol testing. In July of 2021, the State granted Harrison’s motion to transfer his probation to Allen County. After the transfer, Harrison was required to follow the probation conditions of both Allen and DeKalb Counties.
- [4] A few months later, the Allen County probation office, following “standard operating procedures[,]” collected a urine sample from Harrison for drug testing. Tr. Vol. II p. 17. Harrison’s sample tested positive for amphetamine, methamphetamine, alprazolam, hydrocodone, hydromorphone, oxycodone, oxymorphone, fentanyl, and norfentanyl. Harrison also admitted to using methamphetamine. As a result, the State petitioned to revoke Harrison’s probation.
- [5] Not long after that, the Allen County probation office sent a letter to Harrison’s address on file informing him that he had missed a probation appointment. A computer had generated the address on the envelope, and the probation office had checked that that address matched the address on file. On November 12, 2021, the letter was returned to the probation office. Shortly thereafter, the State filed a supplemental petition to revoke or modify Harrison’s probation due to his alleged failure to update his current address and to report for a scheduled probation appointment.

- [6] The terms of Harrison’s probation also required that he undergo substance-abuse assessments. However, Harrison had been scheduled for four assessments and had canceled each of them. Consequently, the State filed a second supplemental petition to revoke or modify Harrison’s probation, alleging that he had failed to obtain a substance-abuse assessment.
- [7] Then, in February of 2022, a probation officer visited the jail to conduct a drug screen of Harrison, who had been arrested the day before on a failure-to-appear warrant. The probation officer asked Harrison to complete a drug screen, to which Harrison responded something along the lines of, “Nah, that’s not gonna happen.” Tr. Vol. II p. 38. Harrison then “initially refused to sign the [drug screen] form” before eventually “scribbl[ing]” on the form “in an angry way.” Tr. Vol. II p. 31. That same day, the State filed a third supplemental petition to revoke or modify Harrison’s probation, alleging that he had refused to participate in a drug screen.
- [8] In May of 2022, the trial court conducted a fact-finding hearing at which it determined that Harrison had violated the conditions of his probation by failing to follow through with treatment, consuming controlled substances, failing to list his address with the probation office, and refusing a drug screen. As a result, the trial court ordered Harrison to serve 450 days in the DeKalb County Jail, eighty-four of which to be credited as served. Harrison argues on appeal that the evidence is insufficient to support that judgment.

Discussion and Decision

[9] Probation is an alternative to incarceration. *Johnson v. State*, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016). However, “there is no right to probation: the trial court has discretion whether to grant it, under what conditions, and whether to revoke it if conditions are violated.” *Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007) (citing *Isaac v. State*, 605 N.E.2d 144, 146 (Ind. 1992)). “Probation revocation is a two-step process.” *Johnson*, 62 N.E.3d at 1229. First, the court must determine whether a violation occurred. *Id.* Second, the court must determine whether that violation warrants revocation of the probation. *Id.*

[10] A revocation hearing is civil in nature, and thus the State need only establish the alleged violation by a preponderance of the evidence. *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). When reviewing the sufficiency of the evidence in a probation revocation case, “we use the same standard as in any other sufficiency question.” *Id.* (citing *Richeson v. State*, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), *trans. denied*). In other words, we look only for an abuse of discretion. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). “[W]e consider only the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of the witnesses.” *Id.* (citing *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995)). We will affirm a probation revocation “[i]f there is substantial evidence of probative value to support the trial court’s decision that a defendant has violated *any* terms of probation[.]” *Id.* (emphasis added); *see, e.g., Menifree v. State*, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992) (acknowledging that the State need not present evidence on every probation violation because revocation is appropriate if any violation is proven).

[11] As an initial matter, strict procedural and evidentiary rules are not required at probation violation hearings; instead, “a judge may consider any relevant evidence that has some substantial indicia of reliability.” *Cox v. State*, 706 N.E.2d 547, 550–51 (Ind. 1999). In arguing that the evidence is insufficient to support probation revocation under the original petition alleging drug use, Harrison contends that the record containing the positive result does not bear sufficient indicia of reliability because the State failed to establish a chain of custody for the urine sample. We disagree.

[12] Contrary to Harrison’s argument, the evidence supporting probation revocation shows sufficient indicia of reliability. In *Cox*, the Indiana Supreme Court held that “evidence that Defendant tested positive for marijuana use” proven by the “results of a urinalysis conducted by an independent toxicology laboratory” was “sufficient evidence to support the trial court’s revocation[.]” 706 N.E.2d at 552. Here, the Allen County probation office followed “standard operating procedures” in collecting a urine sample from Harrison on September 2, 2021, and in sending that sample to Cordant Health Solutions for “accurate and reliable” drug testing. Tr. Vol. II p. 17. This sample tested positive for amphetamine, methamphetamine, alprazolam, hydrocodone, hydromorphone, oxycodone, oxymorphone, fentanyl, and norfentanyl.

[13] Put simply, Harrison’s test results provide sufficient indicia of reliability to prove that he had violated the terms of his probation by consuming controlled substances. Thus, because the test results bear “some substantial indicia of reliability[.]” and Harrison had “agree[d] that the results be admissible at

revocation [...] proceedings[,]” the trial court properly considered that evidence. *Cox*, 706 N.E.2d at 552; Appellant’s App. Vol. II p. 126.

Additionally, on September 22, 2021, Harrison admitted that he had used methamphetamine while on probation. Harrison’s argument essentially amounts to a request to reweigh the evidence, which we will not do. *Gray v. State*, 903 N.E.2d 940, 943 (Ind. 2009).

[14] Because we conclude that the trial court did not abuse its discretion on this issue, we need not consider Harrison’s challenges to the supplemental petitions to revoke his probation. *See, e.g., Menifree*, 600 N.E.2d at 970 (acknowledging that revocation is appropriate if *any* violation is proven).

[15] The judgement of the trial court is affirmed.

Bailey, J., and Pyle, J., concur.