

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert Reece III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 5, 2021

Court of Appeals Case No.
20A-CR-2029

Appeal from the
Posey Circuit Court

The Honorable
Craig S. Goedde, Judge

Trial Court Cause No.
65C01-1810-F5-469

Vaidik, Judge.

Case Summary

- [1] Robert Reece III appeals the trial court’s order revoking his probation and ordering him to serve his suspended sentence in the Department of Correction. We affirm.

Facts and Procedural History

- [2] In November 2018, Reece pled guilty to three Level 6 felonies: domestic battery, cruelty to an animal, and criminal confinement. The trial court sentenced him to three years, with six months executed in the DOC and two-and-a-half years suspended to probation. As conditions of probation, Reece was required to perform forty-eight hours of community service and undergo a substance-abuse evaluation and attend any recommended treatment.
- [3] On September 1, 2020, approximately twenty months into Reece’s thirty-month probation, the State filed a petition to revoke Reece’s probation, alleging he violated by: (1) “admit[ing] to consuming marijuana” six times between May 2019 and August 2020; (2) failing six drug screens; (3) repeatedly failing to attend substance-abuse treatment; and (4) failing to “turn[] in any community service hours.” Appellant’s App. Vol. II pp. 45, 46. An initial hearing was held on September 11. The trial court advised Reece of his rights, and Reece said he did not “understand.” Tr. Vol. II p. 4. The court then went through each of Reece’s rights to ensure he understood, and Reece confirmed after each one he did. The court asked Reece how he wished to proceed, and he responded he

wanted to “represent [him]self” and “plea[d]” because he was “guilty.” *Id.* at 7, 8. The court reminded Reece he had a right to counsel, and Reece again indicated he wished to represent himself and admit violating his probation. The State proceeded to lay a factual basis, and the following exchange occurred:

COURT: [. . .] do you agree with all of the facts that [the State] has outlined, sir?

MR. REECE: No, sir, I don’t.

COURT: Okay, and which facts do you disagree with, sir?

MR. REECE: For one, it wasn’t Ireland it was Luzio and Associates that I was going to as counseling and because of the COVID-19 is the reason that I had that with the, it was an appointment that was cancelled, it wasn’t all on me. It was, a lot of that because of COVID-19. I have not lied about anything about the marijuana use. I tell my probation officer every time if I have and the reason I had, sir, because I have PTSD. I have been in the military. That is the only way I can cope without taking a bunch of Xanax and other pain, other pills. It is not that I am wanting to deliberating [sic] do something is wrong, sir.

COURT: You are going to have to . . .

MR. REECE: A lot of that takes place took place and (inaudible) sometimes because I don’t know. I can hear firetrucks. I have been a firefighter since I was seventeen (17). I can hear firetrucks and I can flip out. I can turn on the Weather Channel and hear about the hurricane, my job with in [sic] the service was to recover dead bodies. Recover dead bodies and look for the lost and during hurricanes and tornados. So, I smoke cannabis to go to sleep at night. In Illinois in Harrisburg, they have a doctor that

would prescribe me marijuana for my condition. I don't just smoke marijuana to get high; I smoke it because I need it as a medical marijuana. And in the State of Indiana, you do not have that. I do not deliberately go and smoke marijuana to just get high.

COURT: Sir, other than the Luzio and Associates issue, do you otherwise agree with the facts that were outlined by [the State]?

MR. REECE: Uh . . .

COURT: In terms of the use?

MR. REECE: Yes, sir, I agree with what you say about the using. Because I'm a vet and I can't, I have never lied about that and I am not going to start now.

COURT: Okay. Do you agree with her about the community service hours that have not been performed?

MR. REECE: Sir, I have done community hours, service up there at Black Township. I broke my phone on the last day where I was keeping a record of it and I have done my forty-eight (48) hours and now I am going to have to do it again.

COURT: Okay, so you would agree that there is no record of the community service that you believe that you performed?

MR. REECE: There is no record because I could not get the people to sign off, but I do have witnesses at the fire station saying that I was there and I do have witnesses that I was there, so, I will do them again to satisfy the Court, I will do my community hours again, but I swear on everything that I love, that I have already done them, but I will do them again.

Id. at 11-12. The court then asked Reece if he “believe[d] it to be in [his] best interest at this time to admit the Petition?” and Reece responded, “Yes, sir.” *Id.* at 14. The court found Reece admitted violating his probation, revoked it, and proceeded to sentencing. Reece stated he violated due to his poor “mental state” and asked the court to “give [him] a chance.” *Id.* at 15. The State argued Reece’s underlying charges “were quite serious” and that while on probation Reece had “multiple violations” despite probation “work[ing] with him” and giving him “quite a bit of time to comply.” *Id.* at 16. The trial court ordered him to serve the entirety of his suspended sentence—two-and-a-half years—in the DOC.

[4] The following month, Reece, represented by counsel, moved to correct error, alleging he had “documentary evidence that should have been presented to the Court in his defense.” Appellant’s App. Vol. II p. 56. At a hearing held later that month, Reece asked the trial court for leave to “withdraw his admission” because he suffers from “substantial mental health issues” that “prevented him from understanding exactly what was going on during [the initial] hearing.” Tr. Vol. II pp. 21, 23. Reece further asked the court to set an evidentiary hearing so he could present evidence showing “he was attempting to comply with the Court’s orders.” *Id.* at 22. The court denied the motion, explaining Reece “outright admit[ted]” to continued use of marijuana and had already been given “so many chances” while on probation. *Id.* at 23, 27. However, the court did accept Reece’s offer of proof, which included a 2019 psychological evaluation of Reece. The evaluation indicated Reece has “fair insight and judgment” but

may suffer from post-traumatic stress disorder, major-depressive disorder, and cannabis-use disorder. Ex. A, p. 10.

[5] Reece now appeals.

Discussion and Decision

I. Due Process

[6] Reece first argues the trial court violated his due-process rights by “failing to hold an evidentiary hearing” before revoking his probation. Appellant’s Br. p. 9. “A probationer faced with a petition to revoke his probation is not entitled to the full panoply of rights he enjoyed before the conviction.” *Butler v. State*, 951 N.E.2d 255, 259 (Ind. Ct. App. 2011). However, he is entitled to certain due-process protections before the revocation of his probation. *Id.*

The minimum requirements of due process that inure to a probationer at a revocation hearing include: (a) written notice of the claimed violations of probation; (b) disclosure of the evidence against him; (c) an opportunity to be heard and present evidence; (d) the right to confront and cross-examine adverse witnesses; and (e) a neutral and detached hearing body.

Woods v. State, 892 N.E.2d 637, 640 (Ind. 2008); *see also* Ind. Code § 35-38-2-3 (providing that, absent waiver, a probationer is entitled to a revocation hearing in open court, confrontation, cross-examination, and representation by counsel). When a probationer admits violating probation, the procedural due-process safeguards listed above and an evidentiary hearing are not necessary,

and the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Woods*, 892 N.E.2d at 640.

- [7] Here, Reece admitted violating probation. At his initial hearing, Reece indicated he wanted to “plea[d].” The trial court then informed Reece of his rights and had the State lay a factual basis. Although Reece disputed some details in the State’s factual basis, he ultimately admitted violating probation. The court was free to accept this admission and move on without an evidentiary hearing. *See Beeler v. State*, 959 N.E.2d 828, 831 (Ind. Ct. App. 2011) (“Because the record indicates that [the defendant] admitted to violating the terms of his community corrections placement and probation, no evidentiary hearing was required.”), *trans. denied*. The trial court’s decision not to hold an evidentiary hearing before revoking Reece’s probation did not violate due process.

II. Motion to Correct Error

- [8] Reece also argues the trial court abused its discretion by denying his motion to correct error, in which he asked the court for leave to withdraw his admission and for an evidentiary hearing to be set. We review an appeal of a trial court’s order on a motion to correct error for an abuse of discretion, which occurs when the trial court’s decision is contrary to the facts and circumstances before it. *Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015), *trans. denied*.
- [9] Reece contends his admission should be withdrawn as he suffered “from mental health conditions that made it impossible for him to comprehend the effects of

his admission.” Appellant’s Br. p. 10. However, he does not cite any evidence to support this. The only evidence regarding his mental health comes from his own statements and the 2019 psychological evaluation—neither of which give any indication Reece was unable to understand the proceedings or its consequences. Furthermore, he clearly was able to articulate when he did not understand the proceedings, as he did when the court read him his rights. Yet he never said he did not understand what he was admitting or its consequences. And the trial court generally knew about Reece’s mental-health issues when it accepted his admission and sentenced him because Reece referenced the issues during the hearing. The trial court, having had the opportunity to observe Reece, was in the best position to judge his mental state. *See Hutchison v. State*, 82 N.E.3d 305, 312 (Ind. Ct. App. 2017). We cannot say the court abused its discretion in refusing to allow Reece to withdraw his admission.

[10] As such, the trial court did not abuse its discretion in denying Reece’s motion to correct error.

III. Sanction

[11] Reece also argues the trial court abused its discretion in ordering him to serve the entirety of his suspended sentence in the DOC. Once the trial court has determined revocation is warranted, it may impose 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.”

Overstreet v. State, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019), *trans. denied*. We review a trial court’s sentencing decision for probation violations for abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[12] Here, Reece admitted violating his probation, and the trial court revoked it and ordered him to serve the entirety of his suspended sentence. Reece acknowledges he admitted using marijuana but contends this did not warrant such a “harsh penalty” because he “did not admit that he failed to participate in substance abuse treatment or that he failed to perform community service hours.” Appellant’s Br. p. 14.

[13] We disagree for two reasons. First, Reece admitted to the allegations in the petition that he failed to comply with substance-abuse treatment and did not turn in community-service hours, although he offered excuses for both—that some of the substance-abuse sessions were canceled due to COVID-19 and that he performed the community service but could not get a supervisor to confirm. Second, even without those violations, Reece admitted using marijuana and tested positive while on probation. As the trial court noted, Reece was given “many chances” on probation—he tested positive six times over the course of a year before the petition to revoke was filed. The trial court had ample basis to order Reece to serve his suspended sentence. *See Overstreet*, 136 N.E.3d at 264 (trial court did not abuse its discretion in ordering probationer to serve suspended sentence where he had three positive drug screens and was “shown

considerable leniency and given multiple opportunities to address his addiction, all to no avail.”).

[14] The trial court did not abuse its discretion in ordering Reece to serve the entirety of his suspended sentence in the DOC.

Affirmed.

Bradford, C.J., and Brown, J., concur.