

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Steven D. Timberlake,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 7, 2022

Court of Appeals Case No.
22A-CR-763

Appeal from the Floyd Superior
Court

The Honorable Carrie K. Stiller,
Judge

Trial Court Cause No.
22D01-1309-FA-1796

Altice, Judge.

Case Summary

[1] Steven D. Timberlake appeals the revocation of his probation, presenting two issues for our review:

1. Did the trial court abuse its discretion in admitting unreliable evidence during the probation revocation hearing?

2. Did the trial court abuse its discretion in ordering Timberlake to serve the entirety of his previously suspended sentence?

[2] We affirm.

Facts & Procedural History

[3] On September 16, 2013, the State charged Timberlake with Count I, Class A felony dealing in methamphetamine; Count II, Class C felony possession of a controlled substance; Count III, Class D felony maintaining a common nuisance; and Count IV, Class A misdemeanor possession of paraphernalia. The State subsequently added another charge of Class C felony possession of a controlled substance. On February 13, 2014, Timberlake pled guilty to dealing in methamphetamine as a Class B felony, and the remaining charges were dismissed. The trial court sentenced Timberlake to twenty years, with four years suspended to probation. Timberlake was released from imprisonment on August 5, 2020, and began serving his four-year suspended sentence on probation.

[4] On June 7, 2021, the State filed a notice of probation violation alleging that Timberlake had (1) failed to maintain good behavior, (2) committed new

criminal offenses in Harrison County,¹ (3) used alcohol and drugs not prescribed by a physician, and (4) failed to pay fees and costs. On June 15, 2021, the State filed a petition to revoke Timberlake's probation. On August 25, 2021, the court held a hearing on the petition to revoke probation. An entry on the chronological case summary states that the hearing was reset and that Timberlake was "to enter treatment at Sunrise." *Appellant's Appendix Vol. 2* at 12, 120. On September 3, 2021, the State filed an amended notice of probation violation adding to the list of allegations that Timberlake had failed to attend treatment. A second amended notice was filed on October 7, 2021, adding to the existing allegations that Timberlake committed new criminal offenses in Floyd County.²

[5] On February 9, 2022, the court held an evidentiary hearing on the petition to revoke probation. At the hearing, Ryan Topping, Timberlake's probation officer, testified without objection that Timberlake admitted to using methamphetamine and THC, that Timberlake had tested positive for methamphetamine and THC, that Timberlake had been arrested for new criminal offenses in two different counties, and that Timberlake failed to attend treatment as ordered. New Albany Police Officer Kelly Brown testified about a

¹ The alleged criminal offenses included possession of methamphetamine, possession of marijuana, and possession of paraphernalia.

² Under Cause No. 22D01-2109-F3-1446, Timberlake was charged with Level 3 felony dealing in methamphetamine, and under Cause No. 22D01-2109-F6-1548, he was charged with Level 6 felony unlawful possession of a syringe and Class A misdemeanor resisting law enforcement.

controlled buy involving Timberlake that gave rise to the dealing charge in Floyd County.

- [6] In closing statements, Timberlake’s counsel did not dispute that there was sufficient evidence to support revocation of Timberlake’s probation. The trial court agreed, and after summarizing the evidence of the numerous violations, emphasized that the pending charge for dealing in methamphetamine “obviously caused the most concern for this Court.” *Transcript* at 38.
- [7] On March 16, 2022, the court held a sanctions hearing. The State requested that the court revoke all four years of Timberlake’s suspended sentence. Timberlake requested that two years be revoked, followed by a transition period in a halfway house or treatment facility that can deal with his addiction. In setting out Timberlake’s sentence for his probation violation, the court noted that Timberlake was arrested on the pending dealing charge “very shortly after [his] release in-into, uh, the community,” and that he accumulated additional charges shortly thereafter. *Id.* at 52. The court also noted “other issues with [his] probation from the outset,” including his admitted drug use. *Id.* The court then stated: “[I]t appears to me that really there has been no portion of this suspended sentence . . . where you have followed the rules . . . from the outset in your release.” *Id.* at 53. The trial court then sentenced Timberlake to serve his entire four-year suspended sentence. Timberlake now appeals.

Discussion & Decision

Admission of Evidence

- [8] Timberlake argues that the trial court abused its discretion by admitting testimony bearing insufficient indicia of reliability. Specifically, he challenges Officer Brown’s testimony relating to allegations that he committed a new offense—i.e., dealing in methamphetamine, claiming that her testimony was elicited through leading questions and that it constituted hearsay.
- [9] A probation revocation hearing is civil in nature, and the alleged violation must be proven by the State by a preponderance of the evidence. *Mateyko v. State*, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), *trans. denied*. The rules of evidence do not strictly apply in probation matters and trial courts are “allow[ed] even more flexibility in the admission of evidence[.]” Ind. Evid. Rule 101(d)(2); *Christie v. State*, 939 N.E.2d 691, 693 (Ind. Ct. App. 2011). Our Supreme Court has held that trial courts may consider any relevant evidence bearing some substantial indicia of reliability in probation revocation hearings. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). In the case of hearsay, our Supreme Court adopted the substantial trustworthiness test as the means for determining whether hearsay evidence should be admitted at a probation revocation hearing. *Reyes v. State*, 868 N.E.2d 438, 440 (Ind. 2007). Under this test, the trial court must determine whether the evidence reaches a certain level of reliability—i.e., whether it has a substantial guarantee of trustworthiness—in order to be considered at a probation revocation hearing. *Id.* at 441.

[10] We begin by noting that Timberlake objected to the State’s use of leading questions to elicit Officer Brown’s testimony regarding the controlled buy involving Timberlake. In response, the trial court stated that it did not “have a problem with the questions” that had been posed but indicated it would be better informed if Officer Brown could set out the circumstances in her own words. *Transcript* at 21. The State changed its form of questions and continued its direct examination of Officer Brown.

[11] Timberlake argues that Officer Brown’s subsequent testimony was inadmissible hearsay. Timberlake, however, did not object based on Officer Brown’s testimony failing to bear some sufficient indicia of reliability. He has therefore waived the issue for our review. *See Evans v. State*, 30 N.E.3d 769, 772 (Ind. Ct. App. 2015) (finding waiver where defendant failed to object when evidence offered at trial), *trans. denied*. Waiver notwithstanding, we find that Officer Brown’s testimony bore substantial indicia of reliability. Officer Brown testified that an investigation had occurred and that a confidential informant (CI) was equipped with audio and visual recording equipment and searched prior to the controlled buy. She further testified that she watched the controlled buy take place and listened to the exchange between Timberlake and the CI while they were in a car. She then testified that the amount of methamphetamine found on the CI after the controlled buy was consistent with the exchange she overheard between Timberlake and the CI. Admission of Officer Brown’s testimony during the probation revocation hearing was not an abuse of discretion.

[12] Timberlake also challenges the admission of some of the State’s exhibits on reliability grounds. Specifically, he argues that the trial court abused its discretion in admitting the charging information and probable cause affidavit supporting the commission of the crimes of possession of methamphetamine, possession of marijuana, and possession of paraphernalia. Timberlake, however, did not object to this evidence during the probation revocation hearing and has therefore waived this issue for our review. *See Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) (noting that grounds not raised in the trial court are not available on appeal).

Sanction

[13] Timberlake also argues that the trial court abused its discretion in ordering him to serve the entirety of his previously suspended sentence as a sanction for his violation of the terms of his probation. We review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Moreover, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” *Id.* “If the court finds the defendant has violated a condition of his probation at any time before the termination of the probationary period, and the petition to revoke is filed within the probationary period, then the court may order execution of the sentence that had been

suspended.” *Gosha v. State*, 873 N.E.2d 660, 664 (Ind. Ct. App. 2007); *see also* Ind. Code § 35-38-2-3(h).

[14] As determined above, the trial court properly found that Timberlake violated his probation by committing new criminal offenses and using illegal substances. He also failed to report to treatment for his substance abuse. In setting forth the sanction, the trial court pointed out that Timberlake committed his first offense shortly after being released from prison and explained that the charge for dealing in methamphetamine “caused the most concern” given that Timberlake was on probation for a dealing offense. *Transcript* at 38. Based on the record, we cannot say the trial court abused its discretion in ordering Timberlake to serve the entirety of his suspended sentence.

[15] Judgment affirmed.

Brown, J. and Tavitas, J., concur.