

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rufus Edward Jones,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 18, 2022

Court of Appeals Case No.
21A-CR-2639

Appeal from the Marion Superior
Court

The Honorable Mark D. Stoner,
Judge

The Honorable Jeffrey L. Marchal,
Magistrate

Trial Court Cause No.
49D32-1904-F5-14192

Brown, Judge.

[1] Rufus Edward Jones appeals the revocation of his probation. We affirm.

Facts and Procedural History

[2] On April 12, 2019, the State charged Jones with robbery as a level 5 felony, kidnapping as a level 5 felony, battery resulting in serious bodily injury as a level 5 felony, criminal confinement as a level 6 felony, domestic battery as a class A misdemeanor, criminal mischief as a class B misdemeanor, robbery as a level 5 felony, and domestic battery as a class A misdemeanor. The State and Jones entered into a plea agreement, filed with the court on October 21, 2020, pursuant to which Jones agreed to plead guilty to battery resulting in serious bodily injury as a level 5 felony, and the State agreed to dismiss the remaining counts. The agreement provided that Jones would be sentenced to five years suspended to “non-reporting probation with the conditions being [a no-contact order] with the named victim . . . and [Jones] may not pick up new cases during the pendency of probation.” Appellant’s Appendix Volume V at 27. On November 5, 2020, the court sentenced Jones to five years with 1,795 days suspended to non-reporting probation. On January 18, 2021, the court approved Jones’s request to transfer his probation to Missouri.

[3] On September 28, 2021, a notice of probation violation was filed with the court stating that, “[p]er the State of Missouri,” Jones had failed to report to the probation department as scheduled, his telephone number was disconnected, Jones failed to report after a letter was sent to his last reported address directing him to report on a new date, “they received notification from his Batterer’s Intervention counselor that Mr. Jones was discharged unsuccessfully for failure

to attend,” subsequent attempts to contact Jones were unsuccessful, and he failed to report after a card was left at his last known residence directing him to report to the probation department. *Id.* at 59. The notice of probation violation alleged that Jones failed to report to the probation department on August 11, 2021, his whereabouts were unknown at the time the notice of probation violation was filed on September 28, 2021, and the court issued a warrant for his arrest on September 28, 2021.

[4] On November 4, 2021, the trial court held a hearing at which Jones’s attorney stated that Jones “will admit allegation one, and he would like to admit with explanation,” the court asked Jones if he admitted that he “failed to report to probation as directed,” and Jones answered affirmatively. Transcript Volume II at 6. The court informed him of the rights he would give up by admitting to the violation, found him in violation of the terms of his probation, and allowed him an opportunity to explain his admission. *Id.* Jones stated that he had no other violations except for the instant violation, he had not been aware that Missouri did not have non-reporting probation before he transferred his probation, he had disappeared because “some drug dealers had put a hit out on [him] for whatever reason,” he did not inform his probation officer of the situation because “[i]t’s a lot of them guys got the police and everybody else in their pocket that they paying,” he did not know the identity of the drug dealers, a booking officer confirmed he had a hit on him, his family reported his location to police out of a concern for his safety, and he had been complying with the requirements of his probation until the instant violation. *Id.* at 8-9. The court

asked “[s]o, the State of Missouri keeps a log of people who have hits out on them by drug dealers,” to which Jones responded affirmatively. *Id.* at 10. The court agreed with the deputy prosecutor’s recommendation to revoke Jones’s probation and ordered him to serve three years of his previously suspended sentence in the Department of Correction (“DOC”).

Discussion

[5] Jones concedes that he violated his probation but asserts his violation does not warrant a revocation of his probation. He asserts he “did not stop reporting to probation until he had a legitimate fear that caused him to leave his home and turn off his cell phone,” alleging that “drug dealers had a hit out on him and [he] no longer felt safe” and he “was worried that the local police and probation departments had been corrupted by those threatening him.” Appellant’s Brief at 8-9.

[6] Ind. Code § 35-38-2-3(h), which sets forth a trial court’s sentencing options if the court finds a probation violation, provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of 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 (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

[7] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). The Indiana Supreme Court has explained that “[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” and that “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* As long as the proper procedures have been followed in conducting a probation revocation hearing, “the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). 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. *Smith v. State*, 963 N.E.2d 1110, 1112 (Ind. 2012).

[8] The record reveals that the court initially sentenced Jones for battery resulting in serious bodily injury as a level 5 felony to five years with 1,795 days suspended to non-reporting probation. Jones has a criminal history that includes convictions for theft in 1985, home invasion and robbery in Illinois in 1993, and aggravated battery in Illinois in 2016, and he violated the terms of his placement on work release on September 13, 2012. Jones admitted that he

violated his probation by failing to report as directed. The court was able to consider Jones's testimony regarding his fear for his safety.¹ Given the circumstances and in light of the record, we cannot say that the trial court abused its discretion in revoking Jones's probation and ordering him to the DOC for a three-year period.

[9] For the foregoing reasons, we affirm the revocation of Jones's probation.

[10] Affirmed.

Robb, J., and Mathias, J., concur.

¹ To the extent Jones cites *United States v. Warner*, 830 F.2d 651 (7th Cir. 1987), we note that case states that “[s]ome federal and state cases suggest that a defendant’s probation should not be revoked where his failure to comply was not ‘willful,’” the term “is used in the limited sense that the probationer’s failure was beyond his control and did not implicate the reasons why the sentencing court imposed probation,” “good faith and lack of willfulness does not preclude finding a probation violation,” and

It is undisputed that defendant had a full opportunity below to present the mitigating factors that he now proffers. A rational fact trier in turn could be reasonably satisfied, as the district court found, that defendant’s efforts to file his [tax] returns “were either completely frivolous or completely self-serving” and that the defendant did not lose his records while he was in prison.

830 F.2d 651, 656-658 (7th Cir. 1987). Here, the trial court gave Jones a full opportunity to testify regarding his failure to comply with the terms of his probation and reasonably determined that revocation was appropriate under the circumstances.