

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Mark R. McKinney  
McKinney & Co.  
Muncie, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Myriam Serrano  
Deputy Attorney General

Abigail Dehmlow  
Certified Legal Intern  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Rashid S. Ross,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

July 15, 2022

Court of Appeals Case No.  
22A-CR-943

Appeal from the  
Delaware Circuit Court

The Honorable  
Kimberly S. Dowling, Judge

Trial Court Case No.  
18C02-1705-F2-19

**Baker, Senior Judge.**

## Statement of the Case

[1] At the conclusion of Rashid S. Ross' evidentiary hearing on the State's petition to revoke his probation, the court revoked his probation despite the lack of any evidence beyond the filing of new charges against him. The State concedes the error; thus, we reverse.

## Facts and Procedural History

[2] Ross pleaded guilty to charges in 2017, after which he was sentenced to serve ten years executed in the Department of Correction. Ross successfully petitioned for a modification of his sentence. His executed sentence was suspended and he was placed on supervised probation for the remainder of his sentence.

[3] On December 15, 2021, Ross was charged with conspiracy to possess with intent to sell, deliver or manufacture a controlled substance in Knox County, Tennessee. On January 14, 2022, Ross was arrested and held at the Marion County Jail awaiting extradition to Tennessee. On January 19th, the State filed a petition to revoke Ross' supervised probation based on the filing of the new charge against him.

[4] The court held an evidentiary hearing at which time the State offered exhibits, including a warrant, purporting to be from Knox County, though not certified. Ross' probation officer testified that she had reviewed the probation rules with

Ross and that one of those rules was that he refrain from being charged with any new crimes. Additionally, the probation officer testified that she was unable to obtain any additional information about the alleged pending criminal case in Tennessee because “[t]he records are sealed.” Tr. Vol. II, p. 8. In contrast, Ross also testified at the hearing and stated that there were no criminal charges filed against him in Knox County, and that no one from Tennessee arrived to pick him up even though he had waived extradition. The trial court concluded that a probation violation had been proved based on the State’s exhibit showing that charges were filed in Tennessee, there was an order issued to present Ross to the Tennessee court, and that a bond was established. Ross now appeals.

## Discussion and Decision

- [5] A trial court’s sentencing decisions for probation violations are reviewable for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs when the court’s decision is clearly against the logic and effect of the facts and circumstances. *Id.* A court also abuses its discretion if it misinterprets or misapplies the law. *Gil v. State*, 988 N.E.2d 1231, 1234 (Ind. Ct. App. 2013).
- [6] When a trial court makes the factual determination whether a defendant has committed a new criminal offense while on probation, the court must make its determination using the preponderance-of-the-evidence standard. *Heaton v. State*, 984 N.E.2d 614, 617 (Ind. 2013). Put another way, the State must prove

that the defendant committed a new criminal offense in violation of the terms and conditions of his probation by a preponderance of the evidence. *Id.*

Further, it is reversible error to revoke a defendant's probation based on the fact that criminal charges were filed without anything more. *See e.g., Jackson v. State*, 6 N.E.3d 1040, 1043 (Ind. Ct. App. 2014); *Martin v. State*, 813 N.E.2d 388, 391 (Ind. Ct. App. 2004).

- [7] Here, the only evidence presented in support of the probation violation was a copy of the charge from Tennessee naming the offense, and a document showing that bond had been established, which came in through Ross' probation officer's testimony. There was no factual background supporting the allegation that Ross had committed a new criminal offense. Additionally, Ross testified that he had not been picked up by Tennessee authorities on the new charge and that his inquiries about the Tennessee charges had borne no fruit. The probation officer stated only that the Tennessee "records are sealed." *Tr.* Vol. II, p. 8. Based on this state of the record, we conclude that the court abused its discretion in finding that Ross had violated his probation.

## Conclusion

- [8] Based on the foregoing, we conclude that the court abused its discretion by finding that Ross violated his probation and reverse the judgment of the court.
- [9] Reversed.

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