

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy D. Myers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No.
23A-CR-1637

Appeal from the Adams Circuit
Court

The Honorable Chad E. Kukelhan,
Judge

Trial Court Cause No.
01C01-1809-F3-2

Memorandum Decision by Judge Brown

Judges Riley and Foley concur.

Brown, Judge.

[1] Jeremy D. Myers appeals the trial court’s sanction when it revoked his probation. We affirm.

Facts and Procedural History

[2] In November 2019, Myers pled guilty but mentally ill to two counts of attempted aggravated battery as level 3 felonies pursuant to a plea agreement providing that the sentences were to be served concurrently, Myers would receive a sentence of twelve years with four years suspended and eight years executed, and after serving the “first 650 days” in the Department of Correction (“DOC”), “the balance of the initial executed sentence may be served on home detention if approved” Appellant’s Appendix Volume II at 120.

[3] In January 2020, the trial court sentenced Myers to concurrent sentences of twelve years, suspended four years with eight years executed in the DOC, and ordered that Myers “may serve the first 650 sentence days in the Adams County Detention Center and the balance of the initial executed sentence may be served on home detention through the Adams County Community Corrections if he is accepted into the program” and that he would be on probation for four years after his release. *Id.* at 145. The court ordered Myers to complete a mental health evaluation, complete any required counseling, and abide by all the special conditions and terms set forth at the sentencing hearing and in the sentencing order.

[4] On July 28, 2021, the State filed a petition for a violation of home detention alleging that Myers left his home without approval. On April 4, 2022, the court

accepted Myers's admission of the violation and set the matter for further hearing. On April 13, 2022, the court ordered that Myers serve 1,178 days of his previously suspended sentence in the DOC.

[5] On August 24, 2022, Myers filed a motion for sentence modification, requesting a placement at Neuro Restorative in Carbondale, Illinois, which he argued “would do more to help with [his] rehabilitation than placement at the Indiana Department of Correction[.]” Appellant’s Appendix Volume III at 11. On November 22, 2022, the court ordered that Myers be placed in the custody of Neuro Restorative Facility in Carbondale, Illinois, and that he “complete the program at Neuro Restorative, and continue on probation as previously order[ed] by this Court.” *Id.* at 36.

[6] On May 22, 2023, the State filed a violation of probation petition alleging that Myers was “not in compliance with the NeuroRestorative program in that he [was] refusing to take his medication, [and] he ha[d] refused to attend scheduled sessions, and/o[r] participate in therapeutic sessions” *Id.* at 41.

[7] On June 21, 2023, the court held a hearing on the petition, at which Alyson Wolz, a psychiatric provider with Neuro Restorative, testified that Myers began therapy and “was on psychiatric medications, but then gradually began not taking the medication and then refusing the therapeutic interventions.” Transcript Volume II at 11. She testified that other issues leading to his expulsion from the program included that “he had absconded from the residence several times,” “he had walked several miles,” “[h]e was walking into

traffic,” “[h]e called in a bomb threat to the residence,” and he “[h]ad called the police and was making significant threats to the staff in the residence.” *Id.* at 12. She stated that Myers was “on probation, which included agreeing to regular drug screens and active participation in the therapies,” and it “had gotten to the point where he was refusing all therapies for spe[ech], counseling, occupational therapy, medication, nursing interventions, he was refusing all of those pieces.” *Id.* On cross-examination, she testified that Myers’s “perception was that he did not need the medication, which is part of anosognosia, which is an individual’s challenge in perceiving their own deficits, and we see that frequently in patients that have underlying psychiatric challenges and also in brain injury.” *Id.* at 13.

[8] Myers testified and denied that he had called in a bomb threat, left the premises without permission, or threatened staff members. On cross-examination, he testified that he never took medication while at Neuro Restorative because “doctors put figments in your mind for you to believe,” and stated that he does not trust doctors. *Id.* at 21. He believed that he did not require further therapy or medication.

[9] The court found that Myers had violated his probation, that he had “served 2,277 sentence days/1,708 actual days (September 18, 2018 through May 22, 2023) of the total sentence leaving 2,103 sentence days that could be revoked,” revoked 1,373 days to the DOC, and placed him on probation for two years upon release. Appellant’s Appendix Volume III at 51.

Discussion

[10] Myers argues that the sanction imposed by the trial court was against the logic and effect of the facts and circumstances which include his “ongoing significant mental health concerns” caused by a traumatic brain injury, having “just a moderate risk to re-offend,” and that his previous mental health treatment had yielded benefits for him. Appellant’s Brief at 10-11. He asserts that his violations were technical in nature and symptomatic of the mental health issues that he needs to address.

[11] 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.

[12] 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.* When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Vernon v. State*, 903 N.E.2d 533, 536 (Ind. Ct. App. 2009), *trans. denied*. 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).

[13] The trial court heard evidence at the revocation hearing that Myers began refusing medication and treatment, left the facility, called in a bomb threat, threatened staff, and ultimately refused all treatment. Wolz testified that Myers had been expelled from the program. We cannot say the court abused its discretion in ordering Myers to serve 1,373 days of his previously suspended sentence.

[14] For the foregoing reasons, we affirm the trial court.

[15] Affirmed.

Riley, J., and Foley, J., concur.