

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bonnie C. Hoff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 8, 2023

Court of Appeals Case No.
22A-CR-2692

Appeal from the Noble Circuit
Court

The Honorable Michael J. Kramer,
Judge.

Trial Court Cause No.
57C01-1807-F5-46

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Bonnie C. Hoff appeals following the trial court's order revoking her probation and ordering her to serve the remainder of her previously suspended sentence incarcerated. Hoff presents three issues on appeal, which we consolidate and restate as:

1. Whether the trial court abused its discretion when it found Hoff violated the terms of her probation; and
2. Whether the trial court abused its discretion when it ordered Hoff to serve the entirety of her suspended sentence.

We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] On November 20, 2018, Hoff pled guilty to Level 5 felony intimidation¹ and Class A misdemeanor operating a vehicle while intoxicated.² The trial court sentenced Hoff to a term of four years for Level 5 felony intimidation and one year for operating while intoxicated. The trial court ordered Hoff to serve the sentences concurrently, with one year executed and the remaining three years suspended to probation. The trial court also ordered Hoff to pay \$2.00 in fines and \$185.00 in court costs.

¹ Ind. Code § 35-45-2-1.

² Ind. Code § 9-30-5-2.

[3] On April 22, 2019, Hoff signed an acknowledgment agreeing to abide by her terms of probation, and she signed the document again on September 23, 2019. Hoff's conditions of probation required her to obey all laws and to report any contact with law enforcement to her probation officer within twenty-four hours. The conditions also required Hoff to report to her probation officer as directed and to pay all fines, court costs, and probation user fees. In addition, Hoff was required to complete a substance abuse assessment and a mental health assessment and to follow through with any recommended treatment.

[4] On May 2, 2022, Kelsey Matheus, Hoff's probation officer, filed a probation violation report. The report alleged Hoff had not made any payments toward satisfying her fines, court costs, or probation user fees. It also alleged Hoff failed to call her probation officer for a scheduled telephone appointment on May 2, 2022. In addition, the report alleged Hoff failed to report a traffic stop that occurred on February 14, 2022, to her probation officer within twenty-four hours. It also alleged Hoff was charged with Level 6 felony possession of methamphetamine³ and Class C misdemeanor possession of paraphernalia⁴ on April 10, 2022, and Hoff failed to report this contact with law enforcement to her probation officer within twenty-four hours. The report also stated: "On or around April 29, 2022, Mrs. Hoff was charged under cause number 57D02-2205-CM-411 for Count I: Theft, a Class A Misdemeanor. An initial hearing

³ Ind. Code § 35-48-4-6.1.

⁴ Ind. Code § 35-48-4-8.3.

was set for today, May 2, 2022, at 1:00 PM.” (App. Vol. II at 83.) Lastly, the report alleged Hoff failed to complete recommended substance abuse and mental health treatment. The report stated:

On October 9, 2019, Mrs. Hoff completed her substance abuse assessment and was referred to the Bowen Center in Syracuse to follow through with a mental health assessment, as ordered by the Court, and comply with any recommended treatment.

On October 23, 2019, Mrs. Hoff completed her mental health assessment at the Bowen Center in Albion. Per the Bowen Center, this was just the assessment, and Mrs. Hoff needed to report back for her treatment plan, but she never reported back.

(*Id.* at 86.) On September 26, 2022, Probation Officer Matheus filed a second probation violation report. This report alleged that on September 19, 2022, the State filed additional charges alleging Hoff committed Level 5 felony automobile theft⁵ and Level 6 felony automobile theft.⁶

[5] On October 19, 2022, the trial court held a fact-finding hearing regarding the two probation violation reports. Probation Officer Matheus testified Hoff began probation on September 16, 2019, and her probation was originally scheduled to end on September 22, 2022. Probation Officer Matheus testified Hoff had violated the terms of her probation in numerous ways, including by

⁵ Ind. Code § 35-43-4-2(a)(2)(C).

⁶ Ind. Code § 35-43-4-2(a)(1)(B).

incurring additional criminal charges and not reporting her contacts with law enforcement to the probation department, not following-up with her required substance abuse and mental health treatment, failing to attend a scheduled telephone meeting with her probation officer on May 2, 2022, and not making any payments toward her court costs and probation user fees.

[6] Hoff also testified at the fact-finding hearing, and her attorney questioned her about the Class A misdemeanor theft⁷ case referenced in the first probation violation report:

Q Okay uh, the misdemeanor case, which was here in Noble County under, looked like it was filed in May of this year uh, for theft as an A misdemeanor did you plead guilty in that case?

A I did.

Q Okay so that would be a violation of probation correct?

A Yes

Q That occurred while you were on probation?

A Yes.

⁷ Ind. Code § 35-43-4-2(a).

(Tr. Vol. II at 35.) Hoff later clarified that she violated the terms of her probation by committing the theft “[i]f [she] was still supposed to be on probation.” (*Id.* at 40.) She also testified: “I don’t know why I’m still sitting here when my probation should have been done I’m pretty sure in March or April of this year.” (*Id.* at 38.) Hoff further testified that while she believed her term of probation was over, she had not made any payments toward court costs and probation fees.

[7] At the conclusion of the fact-finding hearing, the trial court stated:

Well I will find that there has been a violation of probation and probation was to be for three (3) years here which would have began um, in April of 2019 and run through uh, April of 2022 this year and um, I will find during that period of time that um, you know, I don’t know if you had the ability to pay the entire amount but um, not paid anything towards it of your fees during the three (3) years uh, failed to call in to report to your probation officer, failed to advise your probation officer law enforcement contact and obviously apparently you have a couple pending cases for the possession of meth and whether it looks like it’s receiving stolen auto parts or whatever the charge is that’s still pending so I’m not going to consider that but you did have a conviction for theft and according to the evidence failed to follow through with mental health treatment so I will find that there has been a violation of probation.

(*Id.* at 43-44) (errors in original). The trial court entertained argument regarding the appropriate sanction and pronounced:

Well I mean the most serious thing is violation of the law although it was a misdemeanor rather than a felony that um, that a conviction and um, I guess the next thing that concerns me is

the mental health services but looking back at the pre-sentence investigation report there is a lengthy number of criminal convictions in the past also so I think it would be appropriate to revoke probation and order that the remainder, the remaining three (3) years be ordered to be executed and I show I think it's twenty-one (21) days credit towards those three years.

(*Id.* at 45) (errors in original).

- [8] On October 19, 2022, the trial court issued a written order revoking Hoff's probation. The written order stated: "The Court finds that the Defendant has knowingly violated the terms of probation in failing to report to his [sic] probation officer as ordered." (App. Vol. II at 108.) An abstract of judgment issued after the revocation of probation listed the revocation reasons as "failure to report" and "unpaid fees." (*Id.* at 109.)

Discussion and Decision

1. Revocation of Probation

- [9] "Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). "Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (internal citation omitted). We review a trial court's decision to revoke probation for an abuse of discretion. *Id.* "An abuse

of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances or when the trial court misinterprets the law[.]”

Heaton v. State, 984 N.E.2d 614, 616 (Ind. 2013) (internal citation omitted).

- [10] A probation hearing is civil in nature, and the State must prove the alleged violations by a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). As our Indiana Supreme Court has explained:

When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if “there is substantial evidence of probative value to support the trial court’s conclusion that a probationer has violated any condition of probation.”

Murdock v. State, 10 N.E.3d 1265, 1267 (Ind. 2014) (quoting *Braxton v. State*, 651 N.E.2d 268, 270 (Ind. 1995)).

- [11] “Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation actually occurred. Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation.” *Benitez v. State*, 199 N.E.3d 811, 813 (Ind. Ct. App. 2022) (internal citation omitted). A probationer facing the revocation of her probation is not entitled to the same procedural due process rights as a defendant in a criminal trial, but the probationer is entitled to “a written statement by the factfinder as to the evidence relied on and reasons for revoking probation.” *Puckett v. State*, 956 N.E.2d 1182, 1186 (Ind. Ct. App. 2011). “The written statement requirement is a procedural device aimed at

promoting accurate fact finding and ensuring the accurate review of revocation decisions. A transcript of the evidentiary hearing . . . is sufficient if it contains a clear statement of the trial court’s reasons for revoking probation.” *Id.* (internal citation omitted).

[12] Initially, Hoff contends the trial court erroneously supported revocation of her probation with probation violations that occurred after Hoff’s period of probation had ended. In *Trammell v. State*, we explained “[t]he disposition regarding a violation of probation may occur after the probationary period has ended, but the violation must have occurred within the probationary period. Revocation is therefore improper when it is based on a violation occurring after the expiration of the term of probation.” 45 N.E.3d 1212, 1215 (Ind. Ct. App. 2015) (internal citation omitted). While there was conflicting testimony regarding when Hoff’s probation was to end, the trial court found Hoff’s probation ran from April 2019 to April 2022. Yet, the trial court found Hoff violated the terms of her probation by failing to call her probation officer in May 2022. The trial court also described as the “most serious thing” Hoff’s conviction of Class A misdemeanor theft. (Tr. Vol. II at 45.) However, Hoff was charged with this offense on April 29, 2022, and the State presented no evidence about when this offense occurred. Given that the trial court found Hoff was on probation for three years beginning when she signed the terms of probation on April 22, 2019, then Hoff’s term of probation would have

terminated before April 29, 2022.⁸ Thus, the trial court erred in finding both that Hoff's term of probation began when she signed the conditions of probation on April 22, 2019, and that she violated the terms of her probation through acts committed after April 22, 2022.⁹ See *Trammell*, 45 N.E.3d at 1217 (holding State failed to present sufficient evidence that the alleged probation violation occurred within the probationary period).

[13] In addition, Hoff asserts the State failed to present sufficient evidence that she violated the terms of her probation by failing to complete recommended substance abuse and mental health treatment. However, “[v]iolation of a single condition of probation is sufficient to revoke probation[,]” *T.W. v. State*, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007), *trans. denied*, and as Hoff herself acknowledges, “the State presented sufficient evidence to prove, and the trial

⁸ While Hoff was arrested and charged with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia during her probationary period, the trial court explicitly stated in announcing its findings that it was not considering this arrest. Moreover, the State presented no evidence regarding the facts underlying these offenses. See *Brown v. State*, 162 N.E.3d 1179, 1183 (Ind. Ct. App. 2021) (“being arrested and charged is not, without more, evidence of a probation violation”).

⁹ The State asserts the invited error doctrine precludes Hoff from challenging the trial court's use of her theft conviction as a basis for revoking her probation. “Under the doctrine of invited error, a party may not take advantage of an error that she commits, invites, or which is the natural consequence of her own neglect or misconduct.” *Hill v. State*, 51 N.E.3d 446, 451 (Ind. Ct. App. 2016). The State notes Hoff initially testified the conviction amounted to a violation of probation, but she subsequently qualified that testimony by saying it was a violation of probation only if she was on probation at the time. The State also notes that in argument before the trial court ruled on whether to revoke Hoff's probation, Hoff's counsel stated: “Well obviously there was a commission of a crime which she admitted is that the violation so nothing to add beyond what has been talked about so far.” (Tr. Vol. II at 43.) However, even though Hoff admitted she was convicted of theft, the State was still under an obligation to prove the theft occurred during Hoff's probationary period. See *Trammell*, 45 N.E.3d at 1216 (rejecting the State's invited error argument and noting that a probationer “is under no obligation to point out to the State that it has failed to prove its case”).

court correctly found, that Ms. Hoff failed to report contact with law enforcement (on February 14, 2022 and April 10, 2022) and failed to pay fees.” (Appellant’s Br. at 15-16.) Probation Officer Matheus testified that, while Hoff completed her initial assessments for substance abuse and mental health treatment, Hoff never followed up to receive a treatment plan. Matheus testified the Bowen Center never gave her a copy of the treatment plan for Hoff, and when Matheus checked with the Bowen Center the morning of the fact-finding hearing, she was told the Center had “nothing on file” for Hoff. (Tr. Vol. II at 32-33.) Hoff testified the Bowen Center did not recommend any follow-up treatment for her, but Hoff also did not provide any documentation from the Bowen Center showing that no follow-up treatment was recommended. The trial court thus implicitly credited Matheus over Hoff on this point, and we will not reweigh the evidence on appeal. The State presented sufficient evidence Hoff violated the terms of her probation by failing to complete her recommended treatment, failing to report contacts with law enforcement, and failing to pay her court costs, fines, and probation user fees. *See Pierce v. State*, 44 N.E.3d 752, 756 (Ind. Ct. App. 2015) (holding State presented sufficient evidence to support probation revocation and noting matters of weighing evidence and judging witness credibility are left to the trial court).

2. Imposition of Sanction

[14] Hoff also contends the trial court abused its discretion when it ordered her to serve her entire three-year suspended sentence in custody as a sanction for her

probation violations. Indiana Code section 35-38-2-3(h) provides that after the trial court has found the probationer violated a condition of her probation,

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.

When a defendant appeals from a trial court's determination of sanction, we review the court's decision for an abuse of discretion. *Heaton*, 984 N.E.2d at 616.

[15] In *Puckett*, we held the trial court abused its discretion by considering multiple improper factors before ordering the defendant to serve the remainder of his previously suspended sentence as a sanction for a probation violation. 956 N.E.2d at 1189. We reversed the trial court and remanded for a new determination of sanction. *Id.* Here, in imposing sanction, the trial court described Hoff's misdemeanor theft conviction as "the most serious thing[.]" (Tr. Vol. II at 45.) The trial court also listed Hoff's failure to meet with her probation officer as a basis for revoking her probation both when it recited the reasons for revoking Hoff's probation at the hearing and in its written order following the hearing.

[16] However, as we discussed above, these alleged probation violations occurred after the trial court found Hoff's probation period had ended. Therefore, we hold the trial court abused its discretion when it based its sanction determination in part on those alleged violations, and we remand for the trial court to sanction Hoff in a manner commensurate with the violations of probation Hoff committed during her term of probation. *See Brown v. State*, 162 N.E.3d 1179, 1184 (Ind. Ct. App. 2021) (holding trial court abused its discretion in ordering the defendant to serve the entirety of his sixteen-year sentence and instructing the trial court on remand to sanction the defendant "in a manner commensurate with the severity of missed appointments with his probation officer, the only violation the State established on this record").

Conclusion

[17] The trial court erred by supporting the revocation of Hoff's probation with acts Hoff committed after the trial court found her term of probation had expired. Nonetheless, the State presented sufficient evidence of other violations to support revocation of Hoff's probation, and we thus affirm the revocation of her probation. However, the trial court abused its discretion in sanctioning Hoff in part based on its erroneous findings. Therefore, we affirm in part, reverse in part, and remand with instructions for the trial court to issue a new sanctioning order.

[18] Affirmed in part, reversed in part, and remanded with instructions.

Mathias, J., and Bradford, J., concur.