

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dakota S. Dudelston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 12, 2021

Court of Appeals Case No.
20A-CR-1795

Appeal from the Delaware Circuit
Court

The Honorable Marianne Vorhees,
Judge

Trial Court Cause No.
18C01-1804-F5-44

May, Judge.

- [1] Dakota S. Dudelston appeals following revocation of his probation. He argues the trial court abused its discretion by ordering him to serve the remainder of his sentence in the Indiana Department of Correction. We affirm.

Facts and Procedural History

- [2] On April 13, 2018, the State charged Dudelston with Level 5 felony domestic battery resulting in injury to a pregnant woman,¹ Level 6 felony domestic battery on a person less than 14 years old,² and Class A misdemeanor interference with the reporting of a crime.³ The parties reached a plea agreement whereby Dudelston was to plead guilty to the Level 5 felony, the State was to dismiss the other two charges, and the court was to impose a two-year sentence suspended to supervised probation. According to the agreement, Dudelston's probation was to include orders that he receive alcohol and substance abuse evaluations and treatment, that he complete the "Choices program" within four months, (Appellant's App. Vol. II at 34), and that he not commit additional abuse of K.J.D. The court accepted the plea and imposed the agreed sentence on June 16, 2018.

¹ Ind. Code § 35-42-2-1.3(a)(1) & (c)(3).

² Ind. Code § 35-42-2-1.3(a)(1) & (b)(4).

³ Ind. Code § 35-45-2-5(a).

[3] On December 7, 2018, the State filed a petition to revoke Dudelston's probation because he failed to report to probation as required. On January 8, 2019, the State filed an amended petition to revoke Dudelston's probation that alleged Dudelston had been charged with a felony in Howard County for abusing K.J.D. On September 25, 2019, the court held a dispositional hearing, found Dudelston violated the terms of his probation, ordered executed the days Dudelston had spent in jail awaiting the hearing, and suspended the remainder of his sentence back to supervised probation.

[4] On January 24, 2020, the State filed another petition to revoke Dudelston's supervised probation due to failure to report to probation, failure to report for drug screens, and a positive drug test. On August 7, 2020, the State filed an amended petition adding an allegation that Dudelston had been charged with a new Level 5 felony. The court held a fact-finding hearing on September 14, 2020, at which a probation officer testified Dudelston failed to report to probation and failed to report for drug screens. In addition, Muncie Police Department Officer Dalton Kurtz testified that he was dispatched to a domestic battery shelter on May 15, 2020, where he took a report from K.J.D.⁴ about Dudelston battering her again. K.J.D. reported the splint on her right hand was

⁴ Officer Kurtz testified he met with "K.B." (Tr. Vol. II at 6.) The Appellant's Brief refers to the woman who met with Officer Kurtz as "K.D." (Br. of Def.-Appellant at 7.) As the trial court explicitly found the "new offense does involve the same victim as in this case[.]" (Tr. Vol. II at 36), we infer that K.B., K.D., and K.J.D. are all the same woman.

for bones broken by Dudelston, and she signed an affidavit indicating Dudelston had battered her. Officer Kurtz obtained K.J.D.'s medical records, which confirmed her injuries. Based on Officer Kurtz's investigation, the State charged Dudelston with Level 5 felony battery. The court found Dudelston violated probation and ordered Dudelston to serve the final ten months⁵ of his sentence in the Indiana Department of Correction.

Discussion and Decision

[5] Dudelston asserts the trial court abused its discretion by revoking his probation and ordering him to serve the remainder of his sentence incarcerated.⁶

“Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court has discretion to set the conditions of probation and “to revoke probation if the conditions are violated.” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Revocation of probation is a two-step process. *Id.* The court first must determine whether a violation occurred. *Id.* After finding a

⁵ Technically, Dudelston had eleven months remaining on his sentence, but he had spent thirty-one days in jail awaiting the hearing. (Order on Fact-Finding Hearing and Dispositional Hearings at 1-2.)

⁶ Dudelston also “urges” us to review and revise his sentence under the Appellate Rule 7(B) standard. (Appellant’s Br. at 11.) However, that standard authorizes us to assess the inappropriateness of sentences imposed following convictions, not the punishments imposed following a trial court’s revocation of the conditional liberty meted out at the trial court’s discretion. *See Milliner v. State*, 890 N.E.2d 789, 793 (Ind. Ct. App. 2008) (declining to review nature of violations and character of probationer when reviewing punishment imposed at probation revocation), *trans. denied*. Accordingly, we reject Dudelston’s request.

defendant violated his probation, the trial court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h).

[6] When a defendant appeals from a trial court’s determination of violation and sanction, we review the court’s decision for an abuse of discretion. *Heaton*, 984 N.E.2d at 616. “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[.]” *Id.* (internal citation omitted). As we conduct our review, we look only at the evidence favorable to the trial court’s judgment, and we may not reweigh the evidence or assess the credibility of the witnesses. *Sanders v. State*, 825 N.E.2d 952, 954-55 (Ind. Ct. App. 2005), *trans. denied*.

[7] In 2018, Dudelston received a two-year sentence suspended to probation after he committed Level 5 felony battery of his pregnant wife, K.J.D. In 2019, the trial court found Dudelston had violated his probation by battering K.J.D., but the court graciously allowed Dudelston to remain on probation. Under these circumstances, we cannot see an abuse of discretion in the trial court’s decision to execute the remaining ten months of Dudelston’s sentence when he again battered K.J.D. during the same two-year term of probation. *See Sanders*, 825 N.E.2d at 957 (affirming revocation of remainder of suspended sentence when probationer had committed additional crimes and failed to cooperate with probation requirements).

Conclusion

[8] In light of Dudelston's repeated violations of the rules of probation, we find no abuse of discretion in the court's order that he serve the remainder of his sentence in the Indiana Department of Correction. Accordingly, we affirm.

[9] Affirmed.

Kirsch, J., and Bradford, C.J., concur.