

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

R. Patrick Magrath
Justice D. Ennis
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indian

IN THE COURT OF APPEALS OF INDIANA

Richard D. Barnes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 31, 2023

Court of Appeals Case No.
23A-CR-1422

Appeal from the Ohio Circuit
Court

The Honorable Kimberly A.
Schmaltz, Magistrate

Trial Court Cause No.
58C01-2008-F4-2

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] Richard D. Barnes appeals the sanction imposed by the trial court following his violation of the terms of his probation. We affirm.

Facts and Procedural History

- [2] In January 2021, the trial court entered a judgment of conviction after Barnes pled guilty pursuant to a plea agreement to possession of a firearm by a serious violent felon as a level 4 felony. The court sentenced Barnes to six years with five years and 229 days suspended to probation. On January 28, 2022, Probation Officer Haley Comer filed a request for probation violation hearing alleging:

[O]n or about January 18, 2022, in Jefferson County, IN, [Barnes] committed the crimes of Count I: Operating While Suspended or Revoked Due to Prior Infraction Violation, a Class A Misdemeanor, and Count II: Possession of Paraphernalia, a Class C Misdemeanor, as charged in the Jefferson Superior Court under cause number 39D01-2201-CM-098. On or about January 24, 2021, in Jefferson County, IN, [Barnes] committed the crimes of Count I: Possession of Methamphetamine, a Level 5 Felony, and Count II: Possession of Paraphernalia, a Class C Misdemeanor, as charged in the Jefferson Superior Court under cause number 39D01-2201-F5-092. These are violations of probation.

Appellant's Appendix Volume II at 112.

- [3] On May 26, 2023, the court held a hearing. Barnes admitted to violating the terms of his probation. The prosecutor stated:

Concerning the new offenses that were alleged in the Request for Probation Violation, while it is noting that he was charged in there – he was – but the case in regards to the Misdemeanor, Driving

While Suspended, ended up getting dismissed pursuant to the Plea Agreement in the F5 case. From pulling the documents from Odyssey, the Charging Information, it was charged with a Level 5 Felony based on the fact that he had a prior Dealing in Methamphetamine – a level 4 Felony – that was originally charged as well as Possession of Paraphernalia. Mr. Barnes ended up pleading guilty to Possession of Methamphetamine, a Level 6 Felony, as well as a Habitual Offender.

Transcript Volume II at 12. The prosecutor noted that Barnes had a lengthy criminal history, reviewed the history, and recommended that two years be revoked and probation continue or that three years be revoked and probation terminate.

[4] Barnes testified that he had started the Matrix program in February, he was part of Wrap-Group which was part of drug treatment, and he had a recovery coach. When asked if his primary concern was his daughter, he replied: “Yes, it would be her. It would be her mom too because they have stopped her chemotherapy and we don’t know how long she is going to live.” *Id.* at 16. He indicated that he could return to work as a concrete finisher and he had done the work for the prior twenty-five years. Barnes stated he struggled with addiction since he was fifteen years old, all of his troubles have stemmed from his addiction issues, he was sober for nearly six years, and he relapsed after his girlfriend left him and he learned his daughter’s mother had cancer.

[5] The trial court stated:

[A]t this point he has five (5) years and two hundred and twenty-nine (229) days hanging over his head? As far as his possible

sentence and he has a total credit time of one hundred and sixty-four (164) [days]. And a pretty bad history, based upon what was recited on the record from the Pre-Sentence Investigation Report that was filed in this case. As well as the two (2) new charges, of course, they dropped the one and he plead to a Level 6 Felony and the Habitual Offender. I commend you for trying to get treatment while incarcerated, sir. I think you need it. But with your history and what I have heard here today, I am not inclined to order you to be released from incarceration at this point. Mr. Barnes, I am concerned about your ability to be on probation and be successful. I don't want to set you up for a situation where you fail. I think the best course of treatment for you at this point is to have three (3) years revoked and your probation terminate.

Id. at 27-28. The court ordered that Barnes serve three years of his previously-suspended sentence in the Department of Correction and that his probation be terminated upon completion of the sentence.

Discussion

[6] Barnes argues that he had a long period of sobriety before relapsing due to stressful events in his life. He asserts he had taken responsibility for his conduct and was actively working through a program to ensure his future sobriety. He contends the court abused its discretion in ordering him to serve three years in light of his significant efforts toward recovery and the undue hardship his incarceration would create for his daughter. He requests reversal and remand with instructions to place him back on probation.

[7] Ind. Code § 35-38-2-3(h) 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.

[8] Probation is a matter of grace. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

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). "Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If 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. We consider only the evidence most favorable to the judgment and 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*.

[9] The record reveals that Barnes admitted that he violated the terms of his probation. The trial court heard testimony regarding Barnes's addiction issues, period of sobriety, and relapse as well as the steps he had taken and programs in which he participated related to treatment and recovery. The court also noted

Barnes's history as reflected in the presentence investigation report ("PSI") which indicates he had convictions for illegal possession of an alcoholic beverage as a class C misdemeanor, conversion as a class A misdemeanor, and residential entry as a class D felony in 2000; battery resulting in bodily injury as a class A misdemeanor and battery committed by means of a deadly weapon or resulting in serious bodily injury as a class C felony in 2003; two counts of public intoxication as class B misdemeanors in 2005; operating a vehicle while intoxicated endangering a person as a class A misdemeanor in 2006 for which he was placed on probation and violated his probation in 2007; operating on suspended or revoked operator's license in Kentucky in 2006; theft as a class D felony in 2013 for which he had a direct placement to community corrections; driving while suspended as class A misdemeanors in 2013, 2014, and 2015; and dealing in methamphetamine as a level 4 felony in 2017. The PSI also states Barnes reported completing a six-month inpatient treatment program in 2016 and participating in the Purposeful Incarceration Program in 2017. The court expressed concern about Barnes's ability to be successful on probation and stated it thought his continued incarceration was the best course of treatment.

[10] In light of the record, we cannot say the trial court abused its discretion in revoking Barnes's probation and ordering that he serve three years of his previously-suspended sentence.

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

[12] Affirmed.

Vaidik, J., and Bradford, J., concur.