

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Earnest R. Laster,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

June 28, 2024

Court of Appeals Case No.
24A-CR-212

Appeal from the Montgomery Superior Court
The Honorable John G. Baker, Senior Judge
Trial Court Cause No.
54D01-2101-F6-217

Memorandum Decision by Judge Tavitas
Judges Crone and Bradford concur.

Tavitas, Judge.

Case Summary

- [1] Following a hearing, the trial court found that Earnest Laster violated the terms of his probation by: (1) operating a vehicle while Laster's driver's license was suspended; (2) consuming alcoholic beverages while on probation; and (3) committing a new criminal offense. The trial court ordered Laster to serve two and one-half years of his previously suspended five-year sentence in the Department of Correction ("DOC"). On appeal, Laster claims that: (1) the State failed to present sufficient evidence to prove that Laster violated the terms of his probation; and (2) the trial court abused its discretion when sanctioning Laster. We disagree and, accordingly, affirm.

Issues

- [2] Laster raises two issues for our review, which we restate as:
- I. Whether the State presented sufficient evidence to prove that Laster violated the terms of his probation;
 - II. Whether the trial court abused its discretion when sanctioning Laster.

Facts

- [3] On June 13, 2023, Laster pleaded guilty to operating a vehicle with an alcohol concentration equivalent to 0.8 or more, a Level 6 felony, and he admitted to being an habitual vehicular substance offender. On July 10, 2023, Laster was

sentenced to five years in the DOC, all of which was suspended to probation. The trial court ordered that he serve two years of home detention as a condition of his probation. Laster was ordered not to drink or possess any alcohol during his probation.

[4] On September 20, 2023, at 6:50 p.m., Officer Joshua Lohse of the Kokomo Police Department was dispatched to the intersection of South Berkley and West Carter Streets for a hit-and-run investigation. When Officer Loshe arrived, he found a pushed-over street sign and the front bumper of a vehicle. During the investigation, while trying to find out who had been involved in this accident, Officer Loshe “g[ot] the name Earnest R. Laster as someone who had an association with [] the vehicle that had been involved.” Tr. Vol. II. p. 5.

[5] Officer Loshe went to Laster’s residence and spoke with Laster’s roommate, who indicated that Laster was not home. Laster’s roommate contacted Officer Loshe at approximately 9:00 p.m. when Laster returned home. Officer Loshe returned to Laster’s residence and met with Laster. Officer Loshe observed that Laster “was not very steady on his feet. He had to use [Officer Loshe] to maintain his balance. He had bloodshot, watery eyes, and the odor of alcohol . . . on his person.” *Id.* at 6. Officer Loshe also observed that Laster’s speech was slurred.

[6] Based on Officer Loshe’s experience, he believed that Laster had consumed alcohol that day. Officer Loshe requested Laster to do a field sobriety test and

to take a breath test, but Laster refused both. Officer Loshe took Laster to the hospital and obtained a blood draw from Laster.¹

[7] On October 9, 2023, the State filed a petition to revoke or modify Laster's probation. The State alleged the following violations of Laster's probation terms:

[Term 1] You shall not violate the law. You shall notify probation of any arrest within 72 hours.

Mr. Laster has been involved in criminal conduct and on September 20, 2023[,] was arrested and charged with Operating a Vehicle While Intoxicated as a Level 6 felony in Howard County
. . . .

[Term 11] You shall not drink or possess any alcoholic beverage.

On September 20, 2023, Mr. Laster did consume alcohol.

[Term 21] You shall not operate a motor vehicle for a period of 545 days commencing immediately and consecutive to any other suspensions.

On September 20, 2023, Mr. Laster did operate a motor vehicle.

Appellant's App. Vol. II p. 35.

¹ At the time of the hearing, results were not yet available.

- [8] At the probation revocation hearing, the State did not present evidence regarding the driving while suspended offense or the new operating while intoxicated offense and only presented evidence regarding Laster's consumption of alcohol. At the end of the hearing, the trial court found that the State presented sufficient evidence to "show that [Laster] violated the terms of his probation." Tr. Vol. II p. 14.
- [9] The trial court then considered the sanction to be imposed as a result of Laster's probation violation. Laster testified that his roommate put an unknown substance in his drink that "threw [him] off [,] basically." *Id.* at 24. Laster admitted that he was also on probation in Clinton County for a different case when he committed the instant violations. The trial court found "that the explanation from [Laster] is, quite frankly, unworthy of credit." *Id.* at 27. The trial court ordered that Laster serve two and one-half years of his previously suspended five-year sentence in the DOC. After the hearing, the trial court issued a written order finding that Laster violated the terms of his probation by: (1) committing a new criminal offense of operating while intoxicated; (2) consuming alcoholic beverages while on probation; and (3) by driving while suspended. Laster now appeals.

Discussion and Decision

I. Probation Violation

- [10] Laster first argues that insufficient evidence supports the trial court's finding that he violated the terms of his probation. We review a trial court's

determination regarding probation violations for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances or when the trial court misinterprets the law. *Id.*

[11] ““Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.”” *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)). A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence. *Id.*; Ind. Code § 35-38-2-3(f). When the sufficiency of evidence is at issue, we consider only the evidence most favorable to the judgment, and we do not reweigh the evidence or credibility. *Murdock*, 10 N.E.3d at 1267. We 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.” *Id.* “Proof of a single violation is sufficient to permit a trial court to revoke probation.” *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. “The requirement that a probationer obey federal, state, and local laws is automatically a condition of probation by operation of law.” *Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*; Ind. Code § 35-38-2-1(b).

[12] In its written order, the trial court found that Laster violated the terms of his probation by: (1) consuming alcohol; (2) driving while suspended; and (3) operating a vehicle while intoxicated. The State concedes that the trial court erred by finding that Laster drove while suspended and committed a new

criminal act of operating while intoxicated, as the State did not present evidence on these allegations.² See Appellee's Br. p. 11 n.3. Regarding Laster's consumption of alcohol, however, we agree that the State presented sufficient evidence for the trial court to conclude that Laster violated his probation.

[13] As a condition of his probation, Laster was not allowed to "drink or possess any alcoholic beverages." Appellant's App. Vol. II p. 31. The State presented the testimony of Officer Loshe that Laster's speech was slurred; he had bloodshot, watery eyes; his balance was unsteady; and he had the odor of alcohol on his person. The State proved by a preponderance of the evidence that Laster consumed alcohol. This by itself was enough to prove that Laster violated the terms of his probation. See, e.g., *Killebrew*, 165 N.E.3d at 582 ("Proof of a single violation is sufficient to permit a trial court to revoke probation.").

II. Probation Sanction

[14] Next, Laster challenges the sanction imposed by the trial court as a result of his probation violation. We review a trial court's determination regarding

² After Officer Loshe testified, Laster's counsel stated: "Since this is only about alcohol, I'm not going to cross-examine him on the hit-and-run, whatever he observed on that intersection. So that's all. That's all the questions I have." Tr. Vol. II pp. 12-13. The deputy prosecutor later said: "State is now proceeding on the allegations as to Term 1 for Term 21, Your Honor." *Id.* at 14. On appeal, the State contends that this is a scrivener's error in the transcript. Given the remainder of the transcript, we agree. In his Reply Brief, Laster argues that the State should have sought correction of the transcript pursuant to the Appellate Rules. Regardless, the State concedes that it did not present evidence regarding the allegations of driving while suspended or committing a new criminal offense by operating while intoxicated and concedes that the trial court erred by finding that Laster violated the terms of his probation with regards to these two allegations. Accordingly, we need not address this argument further.

sanctions for probation violations 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.*

[15] Probation revocation is a two-step process. *Id.* “First, the trial court must make a factual determination that a violation of a condition of probation actually occurred.” *Id.* “Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation.” *Id.* Indiana Code Section 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.

“While it is correct that probation may be revoked on evidence of violation of a single condition, the selection of an appropriate sanction will depend upon the severity of the defendant’s probation violation” *Heaton*, 984 N.E.2d at 618.

[16] The trial court imposed two and one-half years of Laster's previously suspended five-year sentence based on Laster's violation of his probation terms. Laster argues that the trial court abused its discretion in imposing this sanction. Laster has a history of criminal convictions involving alcohol, including operating while intoxicated. Laster was prohibited from consuming alcohol as a part of his probation terms. Three months after the sentencing hearing, Officer Loshe found Laster with bloodshot eyes, slurred speech, unsteady balance, and the odor of alcohol on his breath. Given Laster's repeated alcohol offenses, we conclude that the trial court did not abuse its discretion by ordering that Laster serve two and one-half years of his previously suspended sentence in the Department of Correction.

Conclusion

[17] The State presented sufficient evidence to prove that Laster violated the terms of his probation. Additionally, the trial court did not abuse its discretion by ordering Laster to serve two and one-half years of his previously suspended sentence. Accordingly, we affirm.

[18] Affirmed.

Crone, J., and Bradford, J., concur.

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