

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Royce Tillman,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2024

Court of Appeals Case No.
23A-CR-2621

Appeal from the Howard Circuit Court

The Honorable Lynn Murray, Judge

The Honorable Cheyenne P. Shepherd, Magistrate

Trial Court Cause No.
34C01-2202-F6-399

Memorandum Decision by Judge Riley

Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Royce Tillman (Tillman), appeals following the revocation of his probation.
- [2] We affirm.

ISSUES

- [3] Tillman presents this court with two issues, which we restate as:
- (1) Whether the trial court abused its discretion when it revoked his probation; and
 - (2) Whether the trial court abused its discretion when it ordered him to serve 450 days of his previously suspended sentence.

FACTS AND PROCEDURAL HISTORY

- [4] On February 8, 2022, the State filed an Information in Howard County under cause number 34C01-2202-F6-399 (F6-399), charging Tillman with Level 6 felony failure to register as a sex or violent offender in cause number 34D02-1905-F1-1433 (F1-1433), wherein he had been convicted of Level 4 felony child solicitation. The probable cause affidavit in F6-399 indicates that the basis for the charge was that Tillman had become gainfully employed and had changed

his address but had failed to register these facts with the sex and violent offender registry (the SOR) within seventy-two hours as required. On May 11, 2022, Tillman pleaded guilty in F6-399 pursuant to an agreement with the State that he would receive a sentence of two years, with 170 days credited to time served and 560 days suspended to probation. As further terms of his plea agreement, Tillman was to register with the SOR as required in F1-1433, and the State agreed to dismiss a petition to revoke in F1-1433. That same day, the trial court accepted Tillman's guilty plea and sentenced him according to the terms of his plea agreement. Two conditions of Tillman's probation in F6-399 were that he was not to commit any new offenses and that he was to report any new arrests to his probation officer within forty-eight hours.

- [5] On February 20, 2023, Tillman became employed by a food manufacturing company in Frankfort, Clinton County, Indiana. During a March 14, 2023, check-in with his Howard County probation officer, Amanda Spicer (Spicer), Tillman reported that he had not yet registered his employment and was advised by Spicer that he was required to do so immediately. On April 20, 2023, Tillman went to the Clinton County Sheriff's Office to register his employment and provided a start date of April 20, 2023. A Clinton County deputy contacted the human resources department at Tillman's employer to verify Tillman's employment and was informed that Tillman had actually started working there on February 20, 2023. The deputy contacted Spicer with this information. Tillman was subsequently charged in Clinton County under

cause number 12C01-2305-F5-609 (F5-609) with Level 5 felony failure to register as a sex or violent offender.

[6] On July 13, 2023, the State filed a petition to revoke Tillman's probation in F6-399. On July 28, 2023, Tillman was arrested on the Clinton County F5-609 charge. On August 1, 2023, he posted bond and reported his arrest to the Howard County Probation Department.

[7] On October 4, 2023, the trial court held a hearing on the State's petition to revoke Tillman's probation in F6-399. Spicer testified regarding the conditions of Tillman's probation and that she had been contacted by the Clinton County SOR seeking to verify Tillman's employment. Tillman had reported different employment start dates to her, the Clinton County SOR, and to his work release placement. Tillman testified that he had not reported his arrest on the new F5-609 charge within forty-eight hours because he lacked funds. The trial court took judicial notice of the clerk's file in F5-609, which contained the probable cause affidavit outlining the facts concerning Tillman's reported and actual employment dates for his Clinton County employer and the Clinton County Sheriff deputy's investigation which included contacting Spicer.

[8] At the conclusion of the evidentiary hearing, the trial court ruled that Tillman had violated the terms of his probation in F6-399 by committing the new offense of failure to register in Clinton County and by failing to report his arrest in F5-609 within forty-eight hours. The trial court ruled that it did not find Tillman's testimony that he lacked sufficient funds to timely contact the

Howard County Probation Department to be credible. Following its ruling revoking Tillman's probation, the trial court allowed additional testimony regarding what sanction should be imposed. Tillman testified that he was working for a different employer making \$21.50 per hour and that he had sole custody of his daughter. Tillman had a valid driver's license and an automobile. Tillman requested that he be placed on work release as a sanction for his probation violation. Spicer testified during this phase of the hearing that Tillman had admitted to her on several occasions that he had failed to register his employment as required and that she "gave him numerous times, chances and opportunities to do it." (Transcript p. 23). The trial court ordered Tillman to serve 450 days of his previously suspended sentence in the Department of Correction.

[9] Tillman now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[10] Tillman appeals the trial court's revocation of his probation as well as the sanction imposed by the trial court following that revocation. We review both the trial court's revocation decision and its choice of sanction for an abuse of its discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances or when it misinterprets the law. *Id.*

II. *Analysis*

A. *Revocation*

[11] Tillman argues that the trial court's conclusion that he had violated the terms of his probation was unsupported by the evidence. Probation is a matter of grace left to the trial court's discretion and is not a right to which a defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). *Id.* "A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence." *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014); *Heaton*, 984 N.E.2d at 617. When a probationer challenges the sufficiency of the evidence supporting the revocation of his probation, we will consider only the evidence most favorable to the judgment, without regard to weight 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 the probationer violated any condition of his probation. *Id.*

[12] The trial court revoked Tillman's probation before his actual probation in F6-399 had begun, which was within its authority. *See Howe v. State*, 25 N.E.3d 210, 214 (Ind. Ct. App. 2015) (observing that a defendant's probationary period starts immediately after sentencing, despite the fact that his actual probation begins at a later date); *Waters v. State*, 65 N.E.3d 613, 617 (Ind. Ct. App. 2016) (observing that it is "well-established principle of Indiana law that a defendant can have his probation revoked prospectively and his suspended time imposed even before he begins the probation phase of his sentence"). At the revocation

evidentiary hearing, the State proceeded on the theory that Tillman had violated his probation by committing the new offense of failure to register his employment as required in Clinton County as charged in F5-609 and by failing to report his arrest on the F5-609 charge to the Howard County Probation Department within forty-eight hours.

[13] We first address the evidence supporting the trial court's conclusion that Tillman had committed a new offense. Spicer testified at the hearing that it was a condition of Tillman's probation that he not commit any new offenses. As part of his plea agreement in F6-399, Tillman was required to register with the SOR. One mandate of the SOR is that a registrant who works in a county different than his county of residence must register in the work county within seventy-two hours of his arrival there. Ind. Code § 11-8-8-7(g). The trial court took judicial notice of the clerk's file in F5-609 which contained the probable cause affidavit executed by the investigator who made the averments contained therein under oath. The trial court properly used the facts contained in the F5-609 probable cause affidavit as substantive evidence in the F6-399 revocation proceeding. *See Whatley v. State*, 847 N.E.2d 1007, 1010-11 (Ind. Ct. App. 2006) (holding that a probable cause affidavit prepared and signed by an officer under oath and containing relevant evidence of Whatley's commission of a new offense was substantive evidence properly relied upon by the revocation court), *overruled on other grounds*. The F5-609 probable cause affidavit provided that Tillman had become employed in Clinton County on February 20, 2023, but did not report that fact to the Clinton County SOR until April 20, 2023, which

was more than seventy-two hours after his start date. Tillman lied to the Clinton County SOR about his start date, which led the Clinton County deputy to call Spicer, something which Spicer corroborated with her testimony. Therefore, contrary to Tillman's arguments on appeal, his revocation was not based merely upon the fact that he was arrested and charged with a new offense or merely on the fact that Spicer had received a telephone call from the Clinton County SOR. Based on the totality of the evidence before the trial court, we conclude that the State proved by a preponderance of the evidence that Tillman violated his probation by committing the new offense of failure to register with the SOR in Clinton County as required.

[14] Proof of a single violation of a condition of probation is enough to support a probation revocation. *Hammann v. State*, 210 N.E.3d 823, 832 (Ind. Ct. App. 2023), *trans. denied*. However, in addition to establishing that Tillman committed a new offense, the State produced evidence that it was a condition of Tillman's probation in F6-399 that he report any new arrest within forty-eight hours, that Tillman was arrested in F5-609 on July 28, 2023, and that he did not report that fact until August 1, 2023, which was more than forty-eight hours after his arrest. Therefore, the trial court's conclusion that Tillman violated this condition of his probation was also supported by the evidence. On appeal, Tillman's only challenge to this violation is to re-assert his contention that he lacked funds to timely contact the Howard County Probation Department and that there was no evidence that contradicted that fact. However, the trial court specifically found Tillman's testimony on this issue not to be credible.

Tillman's appellate argument is unpersuasive, as crediting it would entail reassessing his credibility, which is contrary to our standard of review. *See Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999) (holding that when reviewing a revocation decision, an appellate court does not judge the credibility of witnesses). We find no abuse of the revocation court's discretion in revoking Tillman's probation. *Heaton*, 984 N.E.2d at 616.

B. *Sanction*

[15] Tillman also contends that the trial court's imposition of 450 days of his 560-day previously suspended sentence was an abuse of discretion. If a trial court revokes probation, it may continue probation, extend the probationary period for not more than one year, or order the execution of all or part of the previously suspended sentence. I.C. § 35-38-2-3(h). The trial court has considerable leeway in deciding how to proceed in probation matters. *Prewitt*, 878 N.E.2d at 188. If this were not so, trial court judges would be less inclined to order probation for defendants. *Id.* The selection of an appropriate sanction depends on the severity of the defendant's violations. *Heaton*, 984 N.E.2d at 618.

[16] Here, Spicer testified at the revocation hearing that she had been supervising Tillman for approximately two years and that he had already had four probation violations filed against him in other matters. In March 2023, Tillman admitted to Spicer several times that he had failed to register his employment. Spicer warned Tillman to register his employment, but without any explanation that is apparent in the record, he did not. The trial court found that Tillman

had violated two conditions of his probation, yet it still did not order him to execute all 560 days of his previously suspended sentence. Given that Tillman's probation was revoked for the very same reason that he initially received the grace of probation and that he was warned by Spicer to register his employment but failed to do so, we find no abuse of the trial court's discretion in imposing 450 days of his previously suspended sentence in F6-399. *Id.* at 616.

[17] Tillman's main challenge to the trial court's sanction is that 450 days executed is too severe because the State only proved that he failed to timely report his new arrest. However, given our conclusion that the State also proved that Tillman committed a new offense, this argument is unavailing. Tillman's reliance on our decision in *Brown v. State*, 162 N.E.3d 1179 (Ind. Ct. App. 2021), is equally unpersuasive. In that case, the trial court revoked Brown's probation based on its conclusion that he had committed new traffic and drug offenses and had failed to report to his probation officer as required. *Id.* at 1181-82. As a sanction, the trial court ordered Brown to execute over sixteen years of a previously suspended twenty-year sentence Brown had received for drug offenses. *Id.* This court found that there was insufficient evidence to support the revocation of Brown's probation for committing new traffic or drug offenses but affirmed the trial court's revocation decision based on evidence of Brown's failure to report to his probation officer. *Id.* at 1182-84. While this court ultimately affirmed the revocation of Brown's probation, we concluded that the imposition of sixteen years for what were essentially "technical violations" was an abuse of the trial court's discretion and remanded for

resentencing “in a manner commensurate with the severity of missed appointments with his probation officer, the only violation the State established on this record.” *Id.* at 1184. *Brown* is distinguishable, as we have concluded that the evidence supported both violations relied upon by the trial court in revoking Tillman’s probation, and Tillman was ordered to execute 450 days, not sixteen years. Accordingly, we do not disturb the trial court’s sanction for Tillman’s probation revocation.

CONCLUSION

[18] Based on the foregoing, we hold that the trial court’s revocation of Tillman’s probation and imposition of 450 days of his previously suspended sentence was not an abuse of its discretion.

[19] Affirmed.

Brown, J. and Foley, J. concur

ATTORNEY FOR APPELLANT

Eric Grzegorski
Kokomo, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana