

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin M. James,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 19, 2022

Court of Appeals Case No.
21A-CR-2679

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause Nos.
03C01-1901-F6-287
03C01-1906-F4-3371

May, Judge.

- [1] Justin M. James appeals following the revocation of his probation. He raises two issues for our review:

1. Whether the trial court abused its discretion when it revoked James's probation for violations and ordered him to serve all remaining time executed; and
2. Whether the trial court's order for James to serve additional executed time under cause number 03C01-1901-F6-287 violated the sentencing terms in the plea agreement that resolved the underlying charges against James.

We affirm.

Facts and Procedural History

[2] On January 13, 2019, Officer Aaron Graham stopped Justin James for a traffic violation and discovered he was driving while suspended. Officer Graham found methamphetamine and prescription pills in James's possession and arrested James based thereon. On January 15, 2019, the State charged James with Level 6 felony possession of methamphetamine,¹ Class A misdemeanor possession of a controlled substance,² and Class A misdemeanor driving while suspended³ under cause number 03C01-1901-F6-287 ("F6-287").

¹ Ind. Code § 35-48-4-6.1(a) (2014).

² Ind. Code § 35-48-4-7(a) (2020).

³ Ind. Code § 9-24-19-2 (2016).

[3] On June 7, 2019, Trooper Jacob Tolle pulled James over after recognizing him from a previous encounter in which James had been driving while suspended and after discovering James was driving a vehicle that was not registered in his name. He ran James's information and discovered James was still driving with a suspended license. Trooper Tolle also received an alert that James had an active warrant for his arrest from Bartholomew County under F6-287. Trooper Tolle found marijuana and a gun in James's vehicle, and he arrested James. On June 12, 2019, the State charged James with Level 4 felony unlawful possession of a firearm by a serious violent offender,⁴ Class A misdemeanor driving while suspended, and Class B misdemeanor possession of marijuana⁵ under cause number 03C01-1906-F4-3371 ("F4-3371"). On August 6, 2019, the State also filed an information for a habitual offender⁶ enhancement that alleged James had accrued two prior felony convictions.

[4] On January 27, 2020, the State added a count of Level 5 felony possession of an altered handgun⁷ to F4-3371. On the same date, as part of a consolidated plea agreement, James pled guilty under F6-287 to Level 6 felony possession of methamphetamine and under F4-3371 to Level 5 felony possession of an altered handgun. The State agreed to dismiss all other charges, to not have

⁴ Ind. Code § 35-47-4-5(c) (2020).

⁵ Ind. Code § 35-48-4-11(a)(1) (2018).

⁶ Ind. Code § 35-50-2-8(a) (2017).

⁷ Ind. Code § 35-47-2-18(a)(2) (2020).

James sentenced as a habitual offender, and to exclude the possibility of additional executed time under F6-287.

[5] After James's sentencing hearing on April 30, 2020, the trial court sentenced him to the Department of Correction ("DOC") under cause F6-287 for a period of 912 days, with 362 days credit toward his sentence, and suspended the balance of his sentence pursuant to the plea agreement. Under F4-3371, the trial court sentenced James to the DOC for a period of five years suspended, with zero days of credit. The court ordered the cause numbers served consecutively, but it ordered James to serve 188 days of probation in F6-287 and 3 years of probation in F4-3371, and the court ordered the probation served concurrently.

[6] On October 13, 2020, the State filed a petition to revoke James's probation that alleged James violated his probation under F6-287 and F4-3371 by failing to comply with treatment recommendations of community corrections, testing positive for illegal substances on three instances, failing to set-up his electronic monitoring, failing to report a change of employment within 24 hours, failing to pay fines and fees, and absconding from electronic monitoring. On January 11, 2021, the trial court found James had violated his probation, and on February 18, 2021, the court revoked ninety-one days of James's suspended sentence, which was equivalent to the time James spent in jail awaiting the revocation proceedings and disposition, and placed James back on probation to be supervised by community corrections.

[7] Community corrections placed James into a residential program at the Whitney House in April 2021 and placed him back on electronic monitoring prior to his transfer to the Whitney House. On May 27, 2021, James was unsuccessfully discharged from the Whitney House for not attending group meetings, for staying out past curfew, for using the common area unauthorized, and for displaying signs of drug use. Community corrections left James on electronic monitoring after his discharge, and he continued the Intensive Outpatient Program (“IOP”) at Whitney House. James attended IOP meetings through Zoom but stopped attending the meetings soon after his discharge from the Whitney House.

[8] James absconded from the probation department’s supervision after he stopped attending the IOP program. Probation field officers visited James’s home on multiple occasions and discovered he was never where he was supposed to be. When probation officers called James, he answered, but he hung up the phone when the officers asked for his location. Probation officers were unable to contact James for twelve to twenty-four hours, determined James had absconded, and then requested a bench warrant.

[9] On June 11, 2021, the State filed a petition to revoke the concurrent terms of probation James was serving under F6-287 and F4-3371. (App. Vol. 2 at 193.) The petition alleged James had been discharged unsuccessfully from a residential treatment program. On July 2, 2021, the State filed an amended petition to revoke James’s probation that alleged James had not notified probation of his change in address, had not attended his scheduled probation

appointments, failed to notify probation of his change in employment, and was out of range for his electric monitoring. At James's revocation hearing on September 13, 2021, the trial court accepted James's admission to violating the terms of his probation by being discharged unsuccessfully from the Whitney House; by failing to notify community corrections of his change of address; by failing to appear for an appointment with his probation officer on July 1, 2021; by failing to notify community corrections of his change in employment; and by being out of range on multiple days for several hours.

[10] During his dispositional hearing on November 1, 2021, the trial court stated the following:

You have 19 previous convictions. You've been on probation 11 times. You've had nine Petitions to Revoke filed and now with this, we're up to about 12. You have violated nine times previously; now 12 times. You have been terminated from probation on at least eight occasions. You've had previous treatment. You had about every treatment we can offer you and the one that we do have that you didn't take, you didn't want because it was at the jail in REALM for a period of time. So you wanted to do it your way. We put everything around you we could. Mr. Johnson has worked with you; Ms. Patton has worked with you; Whitney House has worked with you; treatment providers worked with you and we're back here again on a short period of time after you abscond. There's no way I would place you back on probation.

(Tr. Vol. II at 48.) In cause F6-287, the trial court issued an order revoking James's probation and his suspended sentence, ordered James to serve 912 days in Bartholomew County Jail, and gave him credit for 456 days already served.

In cause F4-3371, the court ordered James to serve his five-year suspended sentence in the DOC and gave him credit for 150 actual days served toward that sentence.

Discussion and Decision

I. Probation Revocation

[11] James argues the trial court abused its discretion when it ordered him to serve the remainder of his suspended time incarcerated after he violated the terms of his probation. “It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated.” *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. We have described probation revocation as a two-step process:

First, the trial court must make a factual determination that a violation of a condition has occurred. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* However, where, as here, a probationer admits to the violations, the trial court can proceed immediately to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* In determining whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *See id.* Once a violation has been found and revocation of probation is warranted, the trial court may impose one 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 year beyond the original

probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. *See* Ind. Code § 35-38-2-3(h).

Id.

[12] James argues his probation violations were only technical in nature and asserts his violations were not so severe as to justify the court's decision to revoke the entirety of his suspended time. James makes his argument based on a quote taken from *Brown v. State*:

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* Given that the remaining . . . violations are technical in nature, the trial court, in its discretion, may decide to continue the probationer on probation without modification. In any event, such determination is better exercised by the trial court [on remand].

162 N.E.3d 1179, 1184 (Ind. Ct. App. 2021) (quoting *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013) (emphasis added; citation omitted)). In *Brown*, we held the trial court abused its discretion when it ordered Brown to serve the remainder of his sentence based on its determination that Brown had missed scheduled appointments with his probation officer. *Id.* at 1184. However, Brown's probation officer testified that Brown made up for some of those missed appointments, but the probation officer did not make a record of those appointments. The probation officer also testified that Brown kept some of the appointments, but the appointments were with a different probation officer. *Id.*

at 1183. As such, Brown had far fewer probation violations than determined by the trial court when it revoked Brown's probation.

[13] Nothing within James's record indicates an oversight by the probation department, which makes his case distinguishable from *Brown*. James did not have legitimate reasons that invalidated the alleged violations of probation. In fact, as the trial court found, James had a history of absconding from the probation department's supervision. James's probation violations were not simply technical in nature; he habitually violated the terms of his probation, which lends to the severity of his probation violations when we look at James's history. Considering James's violations and his history, the trial court did not abuse its discretion when it revoked the entirety of James's suspended sentence. *See Woods v. State*, 892 N.E.2d 637, 642 (Ind. 2008) (affirming the trial court's decision to revoke Wood's probation).

II. Plea Agreement

[14] James argues the trial court violated the terms of his consolidated plea agreement when it applied additional time served against his sentence in F6-287 because the plea agreement called for him to receive no more executed time under F6-287.

A plea agreement is contractual in nature, binding the defendant, the State, and the trial court. *Kopkey v. State*, 743 N.E.2d 331, 340 (Ind. Ct. App. 2001), *trans. denied*. The trial court is given the discretion to accept or reject a plea agreement, and, if it accepts the agreement, it is strictly bound thereby. *Crump v. State*, 740 N.E.2d 564, 573 (Ind. Ct. App. 2000), *trans. denied*. Furthermore,

upon acceptance of such an agreement, the trial court is precluded from imposing any sentence other than that required by the plea agreement. *Pritscher v. State*, 675 N.E.2d 727, 732 (Ind. Ct. App. 1996); *see also* Ind.Code § 35-35-3-3(e) (“If the court accepts a plea agreement, it shall be bound by its terms.”).

Abernathy v. State, 852 N.E.2d 1016, 1019 (Ind. Ct. App. 2006).

[15] James argues that, because the trial court accepted the April 2020 plea agreement that called for him to receive no more executed time under F6-287, the court violated the plea agreement by applying additional time served against the suspended time that was revoked for probation violations in F6-287. However, in *Abernathy*, we explained: “The mere fact that Abernathy had a plea agreement which controlled at the time of initial sentencing in no way modified the trial court’s statutory authority under Ind. Code § 35-38-2-3(g)(3) to order execution of a suspended sentence following a probation violation.” 852 N.E.2d at 1021. The imposition of additional executed time against James’s sentence in F6-287 did not modify his initial sentence, which was entered in accordance with the terms of the plea agreement. Rather, the imposition of additional executed time in response to probation revocation was the sanction for violating the conditions of his probation. *Id.* Therefore, James is incorrect that the trial court violated the plea agreement when it revoked his probation and ordered additional executed time be served in F6-287. *See Cox v. State*, 850 N.E.2d 485, 491 (Ind. Ct. App. 2006) (affirming the trial court’s decision to revoke Cox’s probation after he violated the conditions of his probation which, in turn, violated the terms of the plea agreement).

Conclusion

[16] The trial court did not abuse its discretion when it ordered James to serve all remaining suspended time after he violated the terms of his probation, and the court did not violate James's plea agreement when it applied time served to James's sentence under F6-287. Accordingly, we affirm the trial court's decisions.

[17] Affirmed.

Riley, J., and Tavitas, J., concur.