

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua T. Bladen,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

July 27, 2022

Court of Appeals Case No.
22A-CR-398

Appeal from the Ripley Superior
Court

The Honorable Jeffrey Sharp,
Judge

Trial Court Cause No.
69D01-2007-F6-109

Pyle, Judge.

Statement of the Case

[1] Joshua T. Bladen (“Bladen”) appeals the sanction imposed by the trial court for violating the terms of his probation. Specifically, Bladen argues that the sanction was an abuse of discretion because the violations were relatively minor. Concluding that the trial court did not abuse its discretion, we affirm the sanction imposed by the trial court.

[2] We affirm.

Issue

Whether the sanction imposed by the trial court for Bladen’s probation violation was an abuse of discretion.

Facts

[3] On July 31, 2020, Bladen was charged with nonsupport of a dependent child¹ as a Level 6 Felony for accumulating an arrearage of \$15,071.09. On October 20, 2020, Bladen entered into a plea agreement wherein he would serve a total sentence of 910 days, with 752 days suspended and served on probation.² That same day, the trial court entered judgment of conviction. As a part of his suspended sentence, Bladen agreed to obey certain terms of probation. Among those terms, he agreed to (1) report to the probation department; (2) keep all

¹ IND. CODE § 35-46-1-5.

² This sentence was ordered to be served consecutive to the sentence imposed under cause number 69D01-2009-CM-191, which is not a part of this appeal.

appointments; (3) avoid consuming any illicit substances; and (4) notify the probation department of any changes in address, employment, or phone number. (App. Vol. II at 30).

[4] On November 24, 2020, Bladen appeared for a probation appointment and submitted to a drug screen administered by Probation Officer Cody Tillison (“P.O. Tillison”); the results were positive for methamphetamine. During the appointment, Bladen gave P.O. Tillison his current address as being in New Point, Indiana. On December 3, 2020, Field Officer Joseph Mann (“F.O. Mann”) went to the provided address to verify Bladen’s residency. When F.O. Mann spoke with the resident at that address, he was told that Bladen was not residing there. The resident told him that Bladen might be at another address on the same street. F.O. Mann went to the second address and spoke with that resident. F.O. Mann was told that Bladen had been doing repair work on the roof but that he did not live there. F.O. Mann was then told that Bladen might be living in an apartment above a garage on the same street. F.O. Mann went to that address and spoke with the resident; he was told that Bladen never resided at that apartment. (App. Vol. II at 35-36).

[5] On December 8, 2020, the probation department filed a petition to revoke Bladen’s probation. It alleged that Bladen had tested positive for methamphetamine and failed to notify the probation department of his change of address. A warrant was issued for Bladen’s arrest. Bladen was subsequently arrested, and the trial court held a hearing on February 17, 2021. Bladen

admitted to the violations, but the trial court did not impose a sanction and ordered Bladen to remain on probation.³

[6] On August 11, 2021, Bladen reported to the probation department and spoke with Assistant Director Jenny Wise (“Asst. Dir. Wise”). Bladen told her that he could not provide an address because he was homeless. As a result, Asst. Dir. Wise instructed Bladen to make daily contact with the probation department by phone. In addition, Bladen was given an appointment card and instructed to come in for an appointment on August 16, 2021. (App. Vol. II at 44).

[7] Bladen failed to make daily contact with the probation department and missed his August 16, 2021 appointment. As a result, the probation department filed a second petition to revoke Bladen’s probation. A warrant was issued on August 17, 2021, which was served on January 14, 2022. The trial court held a probation revocation hearing on January 25, 2022. At that hearing, Bladen admitted to the allegations and left the sanction to the discretion of the trial court. Prior to the sanction being imposed, Bladen testified that he had arranged to live with his sister in Osgood, Indiana and that he was employed with Troy Holt Concrete. When asked by his counsel why he did not contact or show up at his appointment with the probation department, Bladen stated that he did not have a phone or transportation. Upon further examination by

³ Bladen was ordered to serve 365 days in the Ripley County Jail for violating the conditions of his probation under cause number 69D01-2009-CM-191.

the trial court, Bladen stated he was living in hotels from September 2021 until his arrest. When the trial court asked Bladen why he made “no contact with the probation department” during that period of time, he said, “I just didn’t?” (Tr. at 11). As a sanction, the trial court revoked the balance of Bladen’s suspended sentence and order him incarcerated for 752 days.

[8] Bladen now appeals.

Decision

[9] Bladen argues that the trial court’s sanction was an abuse of discretion given the relatively minor nature of the violations. Citing a quote from *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013), Bladen asserts that when violations are relatively minor a trial court should take care that the sanction is not too severe.

[10] It is well settled:

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) (explaining that: “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.”).

Murdock v. State, 10 N.E.3d 1265, 1267 (Ind. 2014). Our Indiana Supreme Court has also stated, “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 v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Upon determining that a probationer has violated a condition of probation, the trial court may “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” I.C. § 35-38-2-3(h)(3).

[11] In this case, Bladen’s violation was more than missing a single appointment. It was the second in a series of violations. His first violation involved a positive drug test for methamphetamine and failure to notify probation of a change in address. The trial court showed grace and did not revoke Bladen’s probation under this cause number, but it allowed him to remain on probation. When he reported to probation after being release from jail, Bladen claimed that he was homeless. As a result, he was instructed to make daily contact with probation and report for an appointment on August 16, 2021. At the probation violation hearing, Bladen testified that he failed to report to probation because he did not have a phone, was living in hotels, and was without transportation. However, Bladen claimed that he had now was able to live with his sister, had obtained employment, and was now able to pay for someone to provide transportation. Since it is within the trial court’s discretion whether to continue a probationer on probation without modification, it is also within the trial court’s discretion to revoke probation for a single violation. IND. CODE § 35-38-2-3(a)(1). The record reveals that when the trial court asked Bladen why he had not reported to probation, he stated, “I just didn’t?” (Tr. at 11). Based on the evidence in this case, it is more likely that the trial court simply believed Bladen’s failure to

comply with his conditions of probation was not the result of indigency but more akin to apathy. We conclude that the sanction imposed by the trial court was not an abuse of discretion.

[12] Affirmed.

Robb, J., and Weissmann, J., concur.