

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lyndon Abran,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 30, 2021

Court of Appeals Case No.
21A-CR-315

Appeal from the Pike Circuit Court

The Honorable Jeffrey L.
Biesterveld, Judge

Trial Court Cause No.
63C01-0309-FA-678
63C01-2009-F5-276

Mathias, Judge.

- [1] The Pike Circuit Court revoked Lyndon Abran’s probation and ordered him to serve his previously suspended eight-year sentence in the Indiana Department of Correction (“DOC”). Abran appeals, arguing that the evidence was

insufficient to prove that he violated the terms of his probation and that the trial court's sentencing decision was an abuse of discretion.

[2] We affirm.

Facts and Procedural History

[3] In September 2003, Abran led law enforcement on a car chase after failing to pull over for a traffic stop. *Abran v. State*, 825 N.E.2d 384, 388–89 (Ind. Ct. App. 2005), *trans. denied*. Abran eventually exited the vehicle but continued fleeing on foot until officers apprehended him. *Id.* at 388. When law enforcement searched his person and the vehicle, they found \$3,000 in cash, methamphetamine, and equipment to manufacture and sell methamphetamine. *Id.* Ultimately, a jury found Abran guilty of four felonies and three misdemeanors, and the trial court imposed a fifty-year executed sentence. *Id.* at 389.

[4] Then, over a thirteen month period beginning in June 2016, the trial court granted three motions for sentence modification filed by Abran. In the first order, the court changed Abran's placement from the DOC to work release through community corrections. Conf. Appellant's App. pp. 55–56. About six months later, the court ordered Abran serve the remainder of his executed sentence on home detention. *Id.* at 57–58. And after about seven months on home detention, the court modified Abran's sentence to eight years on probation. *Id.* at 59. As a condition of his probation, Abran agreed that he would "not consume alcohol or use any controlled substance." *Id.* at 60–63. In

fall 2020, however, Abran tested positive for methamphetamine, and the State filed a petition to revoke his probation. *Id.* at 70–71.

[5] The court held Abran’s revocation hearing on November 18.¹ At the hearing, Abran maintained that the positive drug screen was a result of unknowingly ingesting methamphetamine-laced brownies given to him by his girlfriend, Laura Overton. In support of this claim, one of Abran’s friends testified that Laura “was talking about I’ll see [Abran] under the jail, [and Abran] will [be] dead when I’m done with [him].” Tr. p. 33. Laura’s daughter, Ashley White, similarly testified that her mother said, “I can make [] sure that [Abran] [] drops dead in front of me or he rots in prison because he ain’t passing no [] [drug] test.” *Id.* at 26.² On the other hand, one of the probation officers who administered the drug screen, explained that Abran “got very qui[et] and this was not his usual self” when informed about the random drug test. *Id.* at 6. And the trial court admitted into evidence the results of the positive drug test. *Id.* at 8; Conf. Ex. Vol. at 3. At the conclusion of the hearing, the court found that Abran violated a condition of his probation and set the matter for sentencing.

¹ The State had also filed a second petition to revoke Abran’s probation, alleging that he committed criminal offenses in September 2020. Conf. Appellant’s App. pp. 75–76. But at the conclusion of the revocation hearing, the court found that the State failed to meet its burden to show a violation on that petition. Tr. p. 43.

² Prior to leaving the courthouse, Ashley was detained because law enforcement “suspected that she was possibly under the influence of methamphetamine.” Tr. p. 57. A subsequent drug test confirmed law enforcement’s suspicion. *Id.* at 57–58.

[6] At the sentencing hearing, Abran requested to be placed on home detention due to his severe heart condition. *See* Tr. pp. 47–49. But after considering Abran’s lengthy criminal history and multiple unsuccessful attempts with alternative placements, the court revoked Abran’s probation and ordered him to serve his previously suspended eight-year sentence in the DOC. The court also ordered Abran be given the opportunity to participate in the Purposeful Incarceration Program. Abran now appeals.

Discussion and Decision

[7] Abran raises two arguments on appeal: (1) the evidence was insufficient to support the revocation of his probation; and (2) the trial court erred in ordering him to execute his previously suspended sentence. In reviewing Abran’s claims, we are guided by several well-settled principles.

[8] “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). Indeed, the court determines the conditions of probation and may revoke probation if those conditions are violated. *Id.*; *see also* Ind. Code § 35-38-2-3(a). When the State alleges a defendant has violated probation, the trial court holds a revocation hearing where the State must prove the violation by a preponderance of the evidence. *Lightcap v. State*, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). When the court determines that the State met its burden, we will affirm that decision on appeal if it is supported by substantial evidence of probative value. *Id.* After determining a defendant has violated probation, the

court has several options in deciding how to proceed, including revoking probation and ordering the execution of the defendant's previously suspended sentence. *See* I.C. § 35-38-2-3(h). We review a court's sentencing decision on probation violations for an abuse of discretion. *Prewitt*, 878 N.E.2d at 188.

[9] With these principles in hand, we address Abran's claims in turn.

I. Sufficient evidence supported revocation of Abran's probation.

[10] Abran first contends that there was not sufficient evidence to support the revocation of his probation. Though he acknowledges the failed drug test, Abran maintains that testimony at the revocation hearing revealed that his girlfriend Laura "regularly fed him brownies laced with [m]ethamphetamine," and he "was unaware she was doing this." Appellant's Br. at 7. Abran therefore contends "[t]here is no competent evidence that [he] knowingly used illegal drugs." *Id.* We disagree.

[11] We initially observe that Abran's sufficiency argument is nothing more than a request that we reweigh the evidence, which we will not do. *See, e.g., Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. We instead consider only the favorable evidence supporting the trial court's decision. *Id.* And here, the court admitted into evidence drug-screen test results showing that Abran tested positive for methamphetamine. Tr. pp. 7–8; Conf. Ex. Vol. at 3. That evidence alone is sufficient to support the revocation of Abran's probation.

[12] Yet even if we considered Abran’s claim that he unknowingly ingested the illicit substance via methamphetamine-laced brownies, that claim is undercut by testimony at the hearing. Neither Ashley nor Abran ever saw Laura put methamphetamine into any brownies. *See* Tr. pp. 28, 36. And Abran stated that he “didn’t really notice” anything different about the allegedly drug-laced treats. *Id.* at 37. Other testimony also belies Abran’s assertion that “there is no evidence of knowing drug use.” Appellant’s Br. at 8. A probation officer who conducted the drug screen explained that “[Abran’s] demeanor completely changed” when notified about the random test—“he just got very qui[et] and this was not his usual self.” Tr. p. 6.

[13] In short, the State presented sufficient evidence to support the court’s revocation of Abran’s probation.

II. Abran’s sentence was not an abuse of discretion.

[14] Abran next argues that the trial court abused its discretion by ordering him to serve his previously suspended sentence in the DOC. Specifically, he contends that the court erred by not articulating “any mitigating circumstances,” which should have included his poor health and lack of substance abuse treatment. Appellant’s Br. at 13–14. We again disagree.

[15] We first note that Abran’s argument is misplaced, as our trial courts are not required to balance “aggravating or mitigating circumstances when imposing sentence in a probation revocation proceeding.” *Treece v. State*, 10 N.E.3d 52, 59–60 (Ind. Ct. App. 2014) (quotation omitted), *trans. denied*. Instead, the trial

court had three options after finding Abran violated probation: (1) continue the probationary period; (2) extend the probationary period by up to one year; or (3) execute all or part of the previously suspended sentence. [I.C. § 35-38-2-3\(h\)](#). The court here chose option three, and this was not an abuse of discretion.

[16] Abran has been given ample opportunity to conform his behavior through both leniency in sentence modifications and various alternative placements. The trial court aptly observed that it had “tried work release, home detention, probation, all of which has been unsuccessful,” and that Abran’s “IRAS assessment . . . shows [he] is a high risk to reoffend.” Tr. p. 65. In fact, Abran has twice been arrested since being put on probation.³ And while we acknowledge Abran’s heart condition and his expressed desire for substance abuse treatment, the record indicates that he will have the opportunity to receive the help he needs while incarcerated. *See id.* at 64–66.

[17] In sum, the trial court did not abuse its discretion when it ordered Abran to serve his previously suspended eight-year sentence in the DOC.

³ In 2018, Abran was arrested in Illinois for driving a vehicle while intoxicated. Conf. Appellant’s App. p. 66. The arrest resulted in three alleged probation violations, but the State declined to file a motion to revoke Abran’s probation because “he brought it to [the State’s] attention.” Tr. p. 56. The other arrest happened in September 2020 and is mentioned in footnote one above.

Conclusion

[18] The evidence was sufficient to support the revocation of Abran's probation, and the trial court did not abuse its discretion in ordering Abran to execute his previously suspended sentence.

[19] Affirmed.

Riley, J., and Crone, J., concur.