

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEY FOR APPELLANT

David W. Stone IV  
Anderson, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
  
Jodi Kathryn Stein  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Jorge Garza,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 19, 2022  
Court of Appeals Case No.  
22A-CR-769  
  
Appeal from the  
Madison Circuit Court  
  
The Honorable  
Mark Dudley, Judge  
  
Trial Court Cause No.  
48C06-1910-F5-2398

**Vaidik, Judge.**

# Case Summary

- [1] Jorge Garza appeals the revocation of his probation. We affirm.

## Facts and Procedural History

- [2] In November 2019, Garza pled guilty to Level 5 felony battery against a public-safety official and Class A misdemeanor invasion of privacy. He was sentenced to five years, with three years to serve in the Department of Correction (DOC) and two years suspended to probation. On or before January 3, 2022, Garza was released from the DOC and began his probation.<sup>1</sup>
- [3] On the evening of January 3, Garza “passed out” in a park after drinking “a quart of moonshine.” Tr. p. 41. A passerby called 911, and Garza was transported to St. Vincent Hospital in Anderson. While he was in the emergency-room lobby, Garza began “yelling and screaming . . . vulgarities.” *Id.* at 33. Larry Boze, a police officer working at the hospital, approached Garza, whom he believed to be intoxicated based on his slurred speech and difficulty moving. Officer Boze instructed Garza to calm down. When he did not, Officer Boze and medical staff took him to a “behavior room.” *Id.* There, a nurse attempted to examine Garza, who at this point was “almost . . . in an unconscious state.” *Id.* at 34. Officer Boze went to help the nurse move Garza to a bed, and Garza began “pulling away” and “throwing closed fists” at

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<sup>1</sup> The exact date of Garza’s release is unknown.

Officer Boze. *Id.* One of the punches hit Officer Boze in the left arm. Garza continued to swing at Officer Boze and yell obscenities, at which point he was arrested.

[4] Based on this incident, the State filed a new criminal case against Garza, charging him with Level 6 felony battery against a public-safety official, Level 6 felony intimidation, Class A misdemeanor resisting law enforcement, and Class B misdemeanor public intoxication. *See* Cause No. 48C06-2202-F6-434.<sup>2</sup> The State also moved to revoke Garza’s probation in this case, citing the new charges and that Garza failed to keep the probation department informed of his address, failed to report timely to probation, and failed to abstain from the use of alcoholic beverages.<sup>3</sup> A fact-finding hearing on the probation revocation occurred in March.

[5] At the hearing, Officer Boze testified to the events of January 3 as described above. Garza testified he acted the way he did “because [he] was intoxicated.” Tr. p. 18. He denied failing to timely report to probation or to keep probation informed of his address. A probation officer from the Madison County Adult Probation Department testified Garza did not contact the department after his release, although the officer did not know the exact date Garza was released.

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<sup>2</sup> This criminal case is still pending.

<sup>3</sup> Garza did not include the probation order in his appendix, but he does not dispute that these were conditions of his probation.

- [6] The trial court found Garza committed all alleged violations. The court revoked Garza’s probation and ordered him to serve his two-year suspended sentence.
- [7] Garza now appeals.

## Discussion and Decision

- [8] Garza contends the State failed to present sufficient evidence to prove he violated his probation. In reviewing such a claim, we consider only the evidence most favorable to the judgment, we will not reweigh the evidence or judge the credibility of witnesses, and we will affirm if there is substantial evidence of probative value to support the trial court’s finding of a violation. *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). Whereas criminal convictions require proof beyond a reasonable doubt, probation violations need be proven only by a preponderance of the evidence. Ind. Code § 35-38-2-3(f).
- [9] Garza argues there is insufficient evidence to show he failed to timely report to probation or provide probation with an updated address, given that it is unclear when he was released. While this may be true, the trial court also found Garza violated probation by committing several new offenses, including two felonies, and failing to abstain from alcohol, based on the testimony of Officer Boze and Garza’s own statements.<sup>4</sup> “Violation of a single term or condition of probation

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<sup>4</sup> Garza also argues he did not have the requisite intent to commit the new offenses due to his level of intoxication. But voluntary intoxication is not a defense to these crimes. *See* I.C. § 35-41-3-5 (“It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the

is sufficient to revoke probation.” *Cain v. State*, 30 N.E.3d 728, 732 (Ind. Ct. App. 2015), *trans. denied*.

[10] There is sufficient evidence supporting the trial court’s finding Garza violated probation.

[11] Affirmed.

Riley, J., and Bailey, J., concur.

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intoxication resulted from the introduction of a substance into his body: (1) without his consent; or (2) when he did not know that the substance might cause intoxication.”). Furthermore, it is within the trial court’s prerogative to determine that the evidence relating to the new crimes shows a knowing and intentional course of conduct. *See Patterson v. State*, 659 N.E.2d 220, 223 (Ind. Ct. App. 1995).