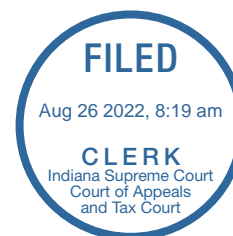


MEMORANDUM DECISION

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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IN THE COURT OF APPEALS OF INDIANA

Makeesha Laannett Harris,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 26, 2022

Court of Appeals Case No.
22A-CR-180

Appeal from the Jefferson Circuit
Court

The Honorable D.J. Mote, Judge

Trial Court Cause No.
39C01-2009-F4-1048

May, Judge.

[1] Makeesha Laannett Harris appeals the revocation of her probation. She argues the trial court abused its discretion when it found she violated the conditions of her probation and ordered her to serve the remainder of her sentence incarcerated. We affirm.

Facts and Procedural History

[2] On February 16, 2021, the trial court sentenced Harris to a two-year term in the Indiana Department of Correction after Harris pled guilty to committing Level 4 felony dealing in methamphetamine.¹ Except for time already served, Harris’s sentence “was suspended to probation to be supervised by Community Corrections[.]” (App. Vol. II at 4.) Two of the conditions Harris was required to abide by were “to report to the Community Corrections Department immediately upon sentencing or release from incarceration and report as directed” and to “obey all federal, state, and local laws.” (*Id.* at 6.) On April 12, 2021, the State filed a verified petition to revoke Harris’s probation in which the State alleged Harris failed to report to community corrections after the date of her sentencing and did not have any contact with community corrections as of the date of the petition. The trial court then issued a warrant for Harris’s arrest.

¹ Ind. Code § 35-48-4-1.1(c).

[3] On November 8, 2021, Officer Ethan Boutwell of the Columbus Police Department received information Harris might be at an address on McKinley Avenue in Columbus, Indiana. Officer Boutwell went to the address and found a group of people, including Harris, smoking marijuana on the porch. Harris admitted some of the marijuana belonged to her. The officers also found a small baggie of methamphetamine in her wallet. Harris told the officers she had last used methamphetamine earlier that day. On November 9, 2021, the State filed charges against Harris in the Bartholomew Superior Court alleging she committed Level 6 felony possession of methamphetamine² and Class B misdemeanor possession of marijuana.³ On December 1, 2021, the State amended its verified petition to revoke Harris's probation to include the additional allegation that she violated the terms of her probation by committing the crimes of possession of methamphetamine and possession of marijuana.

[4] On December 29, 2021, the trial court held a hearing on the amended petition to revoke Harris's probation. Officer Boutwell testified at the probation revocation hearing about arresting Harris for the two possession offenses, and Rhonda Wood, a case manager for Jefferson County Court Services, testified Harris never reported to community corrections after her sentencing date. Harris also testified at the revocation hearing. She denied the allegation that she failed to report to community corrections, and she chose not to testify

² Ind. Code § 35-48-4-6.1(a).

³ Ind. Code § 35-48-4-11(a).

regarding the additional charges pending against her. The trial court then found the State had proven both alleged probation violations by a preponderance of the evidence and ordered Harris to serve the remaining 654 days of her sentence in the Indiana Department of Correction.

Discussion and Decision

- [5] “Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment.” *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). “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). The trial court is charged with setting the conditions of probation and may revoke probation if those conditions are violated. *Id.* “Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation.” *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). When a defendant appeals from a trial court’s determination of violation and sanction, we review the court’s decision for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law[.]” *Id.* (internal citation omitted).

[6] While a probationer is not entitled to the full array of constitutional rights afforded a criminal defendant, the probationer must be afforded some degree of due process before the trial court may revoke probation. *Lightcap v. State*, 863 N.E.2d 907, 910 (Ind. Ct. App. 2007). “A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence.” *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999), *reh’g denied*. When reviewing whether sufficient evidence supported revocation, we do not reweigh evidence or judge the credibility of witnesses. *Morgan v. State*, 691 N.E.2d 466, 468 (Ind. Ct. App. 1998). If there is substantial evidence of probative value to support concluding by a preponderance of the evidence that the defendant violated a term of probation, we will affirm. *Meniffee v. State*, 600 N.E.2d 967, 970 (Ind. Ct. App. 1992), *clarified on other grounds on denial of reh’g*, 605 N.E.2d 1207 (Ind. Ct. App. 1993).

[7] Harris first argues the State did not present sufficient evidence she violated the terms of her probation. Officer Boutwell testified at the hearing on the State’s petition to revoke Harris’s probation that Harris admitted to possessing both methamphetamine and marijuana when he arrested her on November 8, 2021. In addition, Wood testified Harris never reported to community corrections after her sentencing date. Thus, the State presented sufficient evidence to support the trial court’s finding Harris violated the conditions of her probation. *See Pierce v. State*, 44 N.E.3d 752, 756 (Ind. Ct. App. 2015) (holding sufficient evidence supported trial court’s finding defendant violated his conditions of probation by committing a new criminal offense).

[8] Harris also asserts it was inappropriate for the trial court to order her to serve the remainder of her sentence incarcerated as a sanction for her probation violations because she is a drug addict who would receive greater benefit from treatment than incarceration.⁴ After finding a defendant violated her probation, the trial court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h). When the trial court sentenced Harris for dealing in methamphetamine, the court graciously allowed her to serve most of her sentence on probation under the supervision of the court’s community corrections staff. However, Harris flouted the court’s grace from the beginning by failing to report to community corrections. Moreover, when the police eventually found Harris, she was with a group of people using marijuana. She also had methamphetamine in her wallet and admitted using methamphetamine earlier that day. While we applaud Harris’s asserted desire to overcome her drug addiction, she rejected the help available to her through community corrections in favor of continuing her lifestyle of substance abuse. Under these circumstances, we cannot see an abuse of discretion in the trial court’s decision that she serve the remainder of her sentence incarcerated. *See Sanders v. State*, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005) (holding trial court

⁴ Harris claims her “sentence is inappropriate in light of her character and the nature of her offense.” (Appellant’s Br. at 7.) To the extent Harris is attempting to advance an argument challenging her sanction under Appellate Rule 7(B), such contention is inappropriate because that Rule does not apply to appeals following probation revocation proceedings. *See Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008) (“A trial court’s action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule. The review and revise remedy of App. R. 7(B) is not available.”).

did not abuse its discretion in ordering probationer to serve the remainder of her suspended sentence incarcerated when she admitted violating several state laws while on probation and violating other conditions of her probation), *trans. denied.*

Conclusion

[9] Given the testimony of both Officer Boutwell and Wood, sufficient evidence supports the trial court's findings that Harris violated the conditions of her probation. Moreover, we cannot say the trial court abused its discretion in ordering Harris to serve the remainder of her sentence incarcerated after she chose to both ignore the trial court's order that she report to community corrections and continue her lifestyle of drug abuse while on probation for a drug offense. Therefore, we affirm the trial court.

[10] Affirmed.

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