

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Billy R. Spicer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 12, 2022

Court of Appeals Case No.
22A-CR-1045

Appeal from the
Jefferson Superior Court

The Honorable
Blaine S. Goode, Judge

Trial Court Case Nos.
39D01-1808-F6-872
39D01-1808-F6-882
39D01-1812-F6-1314

Darden, Senior Judge.

Statement of the Case

- [1] Billy R. Spicer appeals, challenging the trial court's imposition of the entirety of his previously-suspended sentences to be served in the Department of Correction after finding that Spicer had violated the terms and conditions of his probation. Concluding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

- [2] Spicer was charged on August 21, 2018 with Level 6 felony home improvement fraud in cause number 39D01-1808-F6-872. Just one day later, on August 22, 2018, the State charged Spicer with one count of Level 6 felony home improvement fraud in cause number 39D01-1808-F6-882. Later that year, on December 17, 2018, the State charged Spicer with one count of Level 6 felony home improvement fraud in cause number 39D01-1812-F6-1314. After consulting with counsel, Spicer decided to resolve the criminal charges by negotiating a plea agreement with the State. To that effect, on October 4, 2021, Spicer pleaded guilty to one count of Level 6 felony home improvement fraud under each of the above three cause numbers, and the State dismissed pending petitions to revoke Spicer's probation in two other unrelated prior criminal convictions under cause numbers 39D01-FD-1405 and 39D01-1401-FD-34. The court sentenced Spicer to a term of 540 days with 538 days suspended to probation in each of the above cause numbers to be served consecutively in the instant case.

[3] Upon being released to his new probation on October 4, 2021, the first basic term of Spicer's probation was that he set up an appointment with his probation officer, Noah Hewitt, within 10 days of sentencing. Initially, Spicer scheduled an appointment with Hewitt for October 13, 2021, but Spicer failed to appear at the scheduled time. When Spicer failed to appear, Hewitt called the telephone number Spicer had previously given to the probation department. According to Hewitt's testimony, the person who answered the phone stated, "that this is not Billy Spicer's phone number and please to not contact on this number again." Tr. p. 6. Hewitt testified that the probation department nor he had any contact with Spicer until they were in court and were both present at Spicer's revocation fact-finding hearing in April of 2022.

[4] Spicer had been arrested on December 14, 2021, pursuant to a warrant issued by the trial court after a notice of probation violation was filed against him. Spicer chose to testify at his probation violation hearing and admitted that "there's really no dispute that [he] failed to show up at [the] October 13th appointment." *Id.* at 11. He stated that after being released from custody, he looked for a job "in order to pay for a phone and [he] needed transportation and a place to live" for himself and his three children. *Id.* at 10. However, the record reflects that Spicer found a job working for Goodin's Wrecker Service in Scott County sometime after his release to probation on October 4, 2021. Though Spicer was able to find transportation to work in a neighboring county and a place to live, he did not report to or contact his probation officer during that period. He also conceded, when questioned, that his employer had a

telephone he could have used to call the probation department. He further testified “to be honest I just got so busy working and trying to take care of everything that I forgot.” *Id.* at 13.

[5] The trial court noted on the record Spicer’s multiple convictions for theft, convictions for non-support of dependent children, escape, drugs, and driving offenses, in addition to multiple prior petitions to revoke his probation. The court stated “it is incumbent on the defendant to make sure that he contact[s] the probation department, maintains contact with them. It’s not the probation office’s responsibility to have to chase down probationers.” *Id.* at 14. As for Spicer’s knowledge of his responsibilities as a probationer, the court said, “the defendant does have a lot of experience with the criminal justice system, with probation. He —if he doesn’t understand how it works, then I would be surprised. He should understand it.” *Id.* The court further observed that, “it’s not a good excuse that he forgot, that he was out trying to do things for his family. There’s no excuse not to find a phone, contact the probation department, find a ride to go visit the probation department, if that’s what’s expected of you.” *Id.* at 15. The court concluded by noting that “this petition was filed in early October. Defendant was not arrested on the warrant until December 14th of that year, so there was a substantial period of time that passed that the defendant could have reached out to probation, rectified this situation, but he chose not to.” *Id.*

[6] The trial court revoked Spicer’s probation and ordered that he serve the remainder of his suspended sentences in the Indiana Department of Correction. Spicer appeals, challenging the court’s decision.

Discussion and Decision

[7] In reviewing a trial court’s decision to revoke probation, we keep in mind that probation is a matter of grace, not a right to which a criminal defendant is entitled. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment.” *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). “This gives the defendant an opportunity to show he is able to rehabilitate himself and become a useful member of society without serving his time in prison” as well as “gives the sentencing court an opportunity to observe the defendant’s conduct during this period.” *White v. State*, 560 N.E.2d 45, 46 (Ind. 1990). The conditional liberty granted through probation is dependent upon the observance of certain restrictions to ensure that probation serves as a period of genuine rehabilitation and that the community is not harmed by a probationer being at large. *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999).

[8] When a probation violation occurs, the trial court may “(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 (1) 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. Ind. Code § 35-38-2-3(h) (2015). A trial court retains discretion to grant probation, to determine the conditions of a defendant's probation, and to revoke probation if those conditions are violated. *Mateyko v. State*, 901 N.E.2d 554, 558 (Ind. Ct. App. 2009), *trans. denied*. Thus, we review a trial court's decision to revoke probation for an abuse of discretion. *Id.* We consider only the evidence most favorable to the judgment, and we do not reweigh the evidence or judge the credibility of the witnesses. *Id.* A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances, or if the trial court misinterprets the law. *Killebrew v. State*, 165 N.E.3d 578, 581-82 (Ind. Ct. App. 2021).

[9] It is well settled that probation revocation is a two-step process. *Woods v. State*, 892 NE.2d 637, 642 (Ind. 2008). The court must first make a factual determination that a violation of a condition of probation actually occurred. *Id.* If a violation is proven, then the court must determine if the violation warrants revocation of the probation. *Id.* "The probationary scheme is deliberately designed to give trial judges the flexibility to make quick, case-by-case determinations." *Clark Cnty. Council v. Donahue*, 873 N.E.2d 1038, 1039 (Ind. 2007).

[10] Spicer claims that the trial court abused its discretion by imposing the remainder of his suspended sentences in the Indiana Department of Correction because he "did not commit any additional criminal acts and his violation of

probation was purely technical in nature.” Appellant’s Br. p. 8. We see it differently.

- [11] Sadly, Spicer has had numerous contacts with the criminal justice system, yet has failed to modify his behavior. He has multiple convictions for theft, convictions for non-support of dependent children, escape, drugs, and driving offenses in addition to multiple prior petitions to revoke his probation. His most recent convictions were for home improvement fraud, crimes involving deceitful behavior.
- [12] Further, he had to have been aware by that point, that he was under an obligation to satisfy rudimentary and the most basic of probation conditions; namely, establishing and maintaining contact with the probation department and his probation officer. Looking at the overall scheme of things generally, failure to call your probation officer because of additional difficulties encountered in securing housing, employment, and transportation might seem to fall on the lower end of the range of probation violations, calling into question the court’s use of its discretion. However, looking at the larger picture here as a whole, as the trial court rightfully noted herein, the deceitful conduct Spicer has shown to the trial court after the exercise of the trial court’s grace is indicative that the rehabilitative purposes and/or goals of probation are not being achieved here in a situation where probation was granted after convictions of multiple crimes involving dishonesty; especially when taking into consideration Spicer’s prior criminal history and attempts at rehabilitation and past failed probation attempts.

[13] Spicer was released to probation on October 4th, an arrest warrant was issued on November 9th, and he was arrested on December 14th. By his own admission, Spicer was employed and his employer had a telephone available for his use. His rationalization that he was unable to rectify the situation due to financial stressors therefore strains credulity given that easily available option over a fairly lengthy period of time. Plus, Spicer's explanation that he simply forgot to contact the probation department does not illustrate to the trial court that he is able to assist in an effort to help rehabilitate himself. We find that the trial court was in a better position than this Court to determine whether to credit such testimony and what bearing, if any, it should have on determining the sanction for Spicer's probation violation. We find no abuse of discretion here.

Conclusion

[14] In light of the foregoing, we affirm the trial court's judgment.

[15] Affirmed.

May, J., and Tavitas, J., concur.