

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Hensley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

March 11, 2022

Court of Appeals Case No.
21A-CR-2042

Appeal from the Jefferson Circuit
Court

The Honorable Donald J. Mote,
Judge

Trial Court Cause No.
39C01-1907-F4-888

Robb, Judge.

Case Summary and Issues

- [1] Matthew Hensley appeals the trial court’s revocation of his probation. Hensley raises multiple issues which we restate as: (1) whether sufficient evidence was presented that he violated his probation; and (2) whether the trial court abused its discretion by revoking his probation. Concluding the State presented sufficient evidence that Hensley violated his probation, and the trial court did not abuse its discretion by revoking Hensley’s probation, we affirm.

Facts and Procedural History

- [2] On July 17, 2019, the State charged Hensley with two counts of burglary as Level 4 felonies. Hensley then pleaded guilty to one count of the lesser included offense aiding burglary as a Level 5 felony. The trial court sentenced Hensley to three years all of which was suspended to probation. Conditions of Hensley’s probation included obeying “all federal, state, and local laws.” Appellant’s Appendix, Volume 2 at 18.¹
- [3] On June 7, 2021, Deputy Joshua Juliot of the Scott County Sheriff’s Department responded to a call regarding a suspicious vehicle in a cemetery. When Deputy Juliot arrived, he found Hensley and a female companion asleep in the vehicle. Hensley was sitting in the driver’s seat. Deputy Juliot woke the pair and asked permission to search the car which Hensley granted. Inside the

¹ Citation to the Appellant’s Appendix is based on the pdf. pagination.

car, Deputy Juliot found a metal box directly behind the driver's seat that contained methamphetamine and two hypodermic syringes. Deputy Juliot also located a black backpack behind the driver's seat that contained another hypodermic syringe.² The female passenger in the vehicle identified the backpack as Hensley's. *See id.* at 29.

[4] On June 15, 2021, the State charged Hensley with possession of methamphetamine and unlawful possession of a syringe, both Level 6 felonies. The State also filed a verified petition to revoke Hensley's probation in this case alleging that Hensley violated the terms and conditions of his probation by committing a crime.³ Following a hearing on the State's petition, the trial court concluded that Hensley had violated his probation. The trial court then issued an order revoking Hensley's probation and ordering him to serve the remaining balance of his previously suspended sentence in the Indiana Department of Correction. Hensley now appeals.

Discussion and Decision

² A fourth syringe was found in the front passenger seat of the vehicle.

³ The State also alleged that Hensley violated his probation by failing to pay all fees and costs associated with electronic monitoring and community corrections supervision. *See Appellant's App.*, Vol. 2 at 25. The State alleged Hensley owed \$468. *See id.*

I. Standard of Review

- [5] Probation is a “matter of grace” left to the discretion of the trial court, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “The trial court determines the conditions of probation and may revoke probation if the conditions are violated.” *Id.* The State need only prove the alleged violations by a preponderance of the evidence, and we will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of the witnesses. *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009).
- [6] If the trial court finds that a person has violated a condition of probation at any time before termination of the probationary period, and the petition to revoke is filed within the probationary period, the trial court may impose one or more sanctions, including ordering execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(h).
- [7] A trial court’s decision imposing sanctions for a probation violation is reviewed using the abuse of discretion standard. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law. *Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015), *trans. denied*.

II. Revocation of Probation

[8] Probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). “First, the court must make a factual determination that a violation of a condition of probation actually occurred.” *Id.* If a violation is proven, the trial court then must determine if the violation warrants revocation. *Id.*

A. Violation

[9] Hensley argues that the trial court’s finding of a probation violation was not supported by the evidence presented by the State.⁴ When the State alleges that the defendant violated probation by committing a new criminal offense, the State is required to prove—by a preponderance of the evidence—that the defendant committed the offense. *Heaton v. State*, 984 N.E.2d 614, 617 (Ind. 2013); Ind. Code § 35-38-2-3(f). Here, Hensley was charged with possession of methamphetamine and unlawful possession of syringe. Convictions for possession of illegal items can be based on either actual or constructive possession. *See Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011).

⁴ Hensley also argues that the trial court abused its discretion by considering evidence seized from the vehicle because Deputy Juliot failed to acquire the proper consent to search as required by *Pirtle v. State*, 263 Ind. 16, 29, 323 N.E.2d 634, 640 (1975). *Pirtle* holds that a person who is in police custody must be informed of his right to consult with counsel about the possibility of consenting to a search before a valid consent can be given. 263 Ind. at 29, 323 N.E.2d at 640. However, Hensley was not in police custody when Deputy Juliot requested his consent to search the vehicle, so *Pirtle* does not apply. *See Meredith v. State*, 906 N.E.2d 867, 873 (Ind. 2009) (holding that persons stopped by police in a traffic or investigatory stop are not considered in custody).

- [10] Hensley argues that “the trial court abused its discretion when it found that [he] violated probation by a preponderance of the evidence based on constructive possession[.]” Brief of Appellant at 10. To prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. *Jones v. State*, 807 N.E.2d 58, 65 (Ind. Ct. App. 2004), *trans. denied*.
- [11] The capability prong may be satisfied by “proof of a possessory interest in the premises on which illegal drugs are found[.]” *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). This is so regardless of whether the possession of the premises is exclusive or not. *Id.* at 341; *see also Lampkins v. State*, 1275 (Ind. 1997) (“Because the [bottle containing cocaine] was under defendant’s seat and easily within his reach, he was able to reduce the cocaine to his personal possession.”) (internal quotation marks omitted).
- [12] The intent element of constructive possession is shown by demonstrating a defendant’s knowledge of the presence of the contraband. *See Armour v. State*, 762 N.E.2d 208, 216 (Ind. Ct. App. 2002), *trans. denied*. However, when possession is non-exclusive, additional circumstances must be present to support the inference that the defendant intended to maintain dominion and control over the contraband and that the defendant had actual knowledge of its presence and illegal character. *Macklin v. State*, 701 N.E.2d 1247, 1251 (Ind. Ct. App. 1998). These additional circumstances can include:

(1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) location of substances like drugs in settings that suggest manufacturing; (4) proximity of the contraband to the defendant; (5) location of the contraband within the defendant's plain view; and (6) the mingling of the contraband with other items owned by the defendant.

Parks v. State, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018). These enumerated circumstances are non-exhaustive; ultimately, the question is whether a reasonable factfinder could conclude from the evidence that the defendant knew of the nature and presence of the contraband. *See Gray v. State*, 957 N.E.2d 171, 174-75 (Ind. 2011).

[13] Here, Hensley was sitting in the driver's seat of the vehicle⁵ and both the metal box containing methamphetamine and syringes and a backpack containing a syringe were in the back seat of the vehicle on the driver's side. *See* Transcript of Evidence, Volume 2 at 12. Both items were located easily in Hensley's reach and the passenger of the vehicle told Deputy Juliot that the backpack belonged to Hensley. Therefore, the contraband was in close proximity to Hensley and there was co-mingling of the contraband with an item owned by Hensley. These facts would allow a factfinder to reasonably infer that Hensley had both the intent and capability to maintain control and dominion over the contraband.

⁵ It is unclear from the record whether Hensley is the owner of the vehicle; however, our supreme court has stated: "The issue . . . is not ownership but possession." *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999).

[14] We cannot say that the trial court erred in finding by a preponderance of the evidence that Hensley was in constructive possession of methamphetamine and hypodermic syringes.

B. Revocation

[15] Next, Hensley argues that the “trial court abused its discretion when it revoked the balance of [his] suspended sentence[.]” Br. of Appellant at 12. Specifically, Hensley contends that the revocation of his suspended sentence is an extreme sanction unwarranted by the nature of his violation. However, proof of a single violation is sufficient to permit a trial court to revoke probation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*. And “so long as the proper procedures have been followed in conducting a probation revocation hearing pursuant to Indiana Code Section 35-38-2-3, the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Crump v. State*, 740 N.E.2d 564, 573 (Ind. Ct. App. 2000) (citation omitted), *trans. denied*.

[16] While on probation in this case, Hensley was charged with possession of methamphetamine and unlawful possession of a syringe, both Level 6 felonies.⁶ The trial court held a fact-finding hearing and determined the State had proved by a preponderance of the evidence that Hensley constructively possessed the

⁶ We also note the State alleged that Hensley failed to pay \$468 of community corrections fees and costs, but the trial court did not mention this allegation in its order revoking probation.

methamphetamine and syringes. The trial court's sanction decision is not against the logic and effect of the facts and circumstances of this case. Therefore, the trial court did not abuse its discretion by revoking Hensley's probation and ordering him to serve his previously suspended sentence.

Conclusion

[17] We conclude the State presented sufficient evidence that Hensley violated his probation, and the trial court did not abuse its discretion by revoking Hensley's probation. Accordingly, we affirm.

[18] Affirmed.

Riley, J., and Molter, J., concur.