

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin Nicholas Shinabarger,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 9, 2024

Court of Appeals Case No.
23A-CR-1215

Appeal from the Madison Circuit
Court

The Honorable Angela Warner
Sims, Judge

Trial Court Cause No.
48C01-0307-FB-216

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] Justin Shinabarger appeals the revocation of his probation challenging the sufficiency of the evidence. Shinabarger claims that the State failed to prove all the elements of the crime that he allegedly committed while on probation. Shinabarger further maintains that the trial court abused its discretion in ordering him to serve the remainder of his previously suspended sentence at the Indiana Department of Correction (DOC).

[2] We affirm.

Facts and Procedural History

[3] On July 28, 2003, the State charged Shinabarger with Class B felony burglary and Class D felony theft (the instant offenses). Following Shinabarger's guilty plea to those offenses, the trial court sentenced him to an aggregate six-year term of incarceration. The trial court suspended the sentence and ordered Shinabarger to a work release program through community corrections. The sentence on the instant offenses was consecutive to executed sentences in two other cases, twenty-eight years for armed robbery under 48C01-0511-FB-427 (FB-427) and twenty-four years for escape and carjacking under 48C01-0603-FB-87 (FB-87).

[4] When Shinabarger was sentenced on the instant offense, the presentence investigation report (PSI) indicated that he had amassed juvenile adjudications for theft, visiting a common nuisance, battery, criminal recklessness, and criminal mischief. Shinabarger also had violated his probation multiple times,

and he was eventually placed at the Indiana Boys School. Shinabarger also underwent mental health counseling and substance abuse treatment as a juvenile. Shinabarger had a criminal conviction as an adult for possession of marijuana, and there was a pending Class B felony armed robbery charge when he was sentenced on the instant offenses.

[5] On August 23, 2018, when Shinabarger was nearing completion of his sentence in FB-427, the trial court granted his request for a sentence modification in the instant case and FB-87. The sentences were stayed on the condition that he successfully complete a problem-solving court program. Shinabarger, however, subsequently admitted to a violation of that program and he was ordered to serve an executed sentence under FB-87.

[6] The trial court again granted Shinabarger's request for a sentence modification on March 14, 2022, and placed Shinabarger on informal probation. At this point, he still had remaining about twenty years under FB-87 and his entire sentence on the instant offenses.

[7] On July 25, 2022, Shinabarger admitted that he violated probation by failing to request a change of residence to Florida and update his address with the probation department. As a result, the trial court returned Shinabarger to formal probation and ordered him to reapply for transfer of his supervised probation to Florida.

[8] On February 23, 2023, the State filed a notice of probation violation, alleging that Shinabarger had committed a new criminal offense. The charging

information alleged that on December 28, 2022, Shinabarger committed domestic battery in the presence of a person under the age of sixteen, a Level 6 felony. During a bond revocation hearing on February 27, 2023, with respect to that charge, the State presented the testimony of Shinabarger’s fiancée—Trisha Frazier—the alleged victim of the offense. Frazier testified that on December 28, 2022, Shinabarger was trying to talk to her about a prior eviction from his residence. Frazier ignored Shinabarger’s comments because she was “rubbing” her daughter and trying to “put her . . . to sleep.” *Transcript Vol. II* at 19. Shinabarger became angry, cursed at Frazier, and pulled her hair. Frazier responded “ouch,” indicating that she was in pain. *Id.* at 17, 57-58.

[9] During the subsequent probation revocation hearing, the parties requested that the trial court take judicial notice of Frazier’s testimony at the bond hearing. The trial court agreed and determined that the State proved, by a preponderance of the evidence, that Shinabarger had “committed a new criminal offense of domestic battery.” *Id.* at 58. The trial court did not impose sanctions under FB-87 for the probation violation but revoked the previous six-year suspended sentence on the instant offenses, and ordered him to serve that time in the DOC.¹

[10] Shinabarger now appeals.

¹ At this same time, the trial court also sentenced Shinabarger for a recent conviction for residential entry to two and one half years in the Continuum of Sanctions Program.

Discussion and Decision

I. Sufficiency of the Evidence

- [11] Shinabarger argues that the probation revocation order must be set aside because the evidence was insufficient to support the revocation. Shinabarger claims that the revocation order cannot stand because the State failed to establish that he committed the domestic battery “in the presence of a child under sixteen years of age,” as was alleged in the charging information. *Appellant’s Brief* at 9.
- [12] Our standard of review of the sufficiency of the evidence supporting a probation revocation is similar to our standard of review in other matters: “[W]e consider only the evidence most favorable to the judgment—without regard to weight or credibility—and will affirm if there is substantial evidence of probative value to support the trial court’s conclusion that a probationer has violated any condition of probation.” *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(f); *Heaton v. State*, 984 N.E.2d 614, 617 (Ind. 2013). One violation of a condition of probation is enough to support a revocation. *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997).
- [13] In this case, the State alleged that Shinabarger violated the conditions of his probation because he committed domestic battery on December 28, 2022. That offense is a class A misdemeanor when a defendant “knowingly or

intentionally: (1) touches a family or household member in a rude, insolent, or angry manner.” Ind. Code § 35-42-2-1.3. The offense is elevated to a Level 6 felony when it is committed in the presence of a child younger than sixteen years old. I.C. § 35-42-2-1.3(b)(2).

[14] At the revocation hearing, the trial court took judicial notice of Frazier’s testimony at Shinabarger’s bond revocation hearing, where she testified that Shinabarger—in her daughter’s presence—became angry, pulled her hair, and caused her pain. While Shinabarger correctly observes that the State did not present evidence about the age of Frazier’s daughter, Frazier’s testimony established that Shinabarger committed battery as a class A misdemeanor. The fact that the State did not prove that Frazier’s child was under sixteen years of age—which would have elevated the domestic battery offense to a Level 6 felony—does not warrant setting aside the revocation. *See, e.g., Young v. State*, 980 N.E.2d 412, 423 (Ind. Ct. App. 2012) (because misdemeanor domestic battery is a lesser-included offense of domestic battery committed in the presence of a minor as a class D felony, the evidence was sufficient to support the defendant’s conviction for the lesser offense even though no evidence was presented establishing that the offense was committed in front of a child as the charging information alleged). As the evidence was sufficient to prove by a preponderance of the evidence that Shinabarger committed domestic battery as a class A misdemeanor, the probation revocation order stands.

II. Executed Sentence

- [15] Shinabarger claims that even if the evidence is sufficient to support the probation revocation, the trial court abused its discretion in ordering him to serve the remainder of his previously suspended sentence in the DOC. Shinabarger maintains that because Shinabarger was “making progress in his personal life,” he should not have been ordered to serve executed time. *Appellant’s Brief* at 11.
- [16] Probation is a matter of grace left to the trial court’s 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 determines the conditions of probation and may revoke probation if the conditions are violated. I.C. § 35-38-2-3; *Goonen v. State*, 705 N.E.2d 209, 211 (Ind. Ct. App. 1999). Once a trial court has ordered probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. *Prewitt*, 878 N.E.2d at 188. Accordingly, a trial court’s sentencing decisions for probation violations are reviewed for an abuse of discretion. *See Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Housand v. State*, 162 N.E.3d 508, 513 (Ind. Ct. App. 2020), *trans. denied*. The abuse of discretion standard applies both to determinations about whether a defendant violated probation and as to sanctions. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*.

[17] Pursuant to I.C. § 35-38-2-3(h), “if the court finds that the person has violated a condition [of probation] the court may impose one (1) or more of the following sanctions: (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.” A defendant’s criminal record is a relevant fact in assessing a proper sanction. *Puckett v. State*, 183 N.E.3d 335, 339 (Ind. Ct. App. 2022), *trans. denied*.

[18] In this case, the evidence established that Shinabarger’s criminal history is extensive. He amassed juvenile adjudications that included battery, criminal recklessness, and criminal mischief, and he was eventually ordered to the Indiana Boys School. Shinabarger also violated juvenile supervision on multiple occasions even though he was afforded rehabilitative opportunities including drug treatment and counseling.

[19] Shinabarger’s adult criminal history includes convictions for burglary, armed robbery, carjacking, and escape. As discussed above, notwithstanding opportunities at rehabilitation and alternatives to incarceration, Shinabarger violated the conditions of his probation numerous times and continued to commit criminal offenses. All these factors supported the trial court’s decision that Shinabarger should serve his previously suspended sentence under this cause in the DOC. Thus, Shinabarger’s abuse of discretion argument fails.

[20] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.