

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Caylen J. McPherson
Hamilton Law, LLC
Auburn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Clifton L. Gamble,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 28, 2023

Court of Appeals Case No.
22A-CR-2684

Appeal from the
DeKalb Circuit Court

The Honorable
Kurt B. Grimm, Judge

Trial Court Cause No.
17C01-2003-F5-28

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Clifton Lee Gamble appeals the revocation of his probation, arguing the trial court violated his due-process rights. We find no violation and therefore affirm.

Facts and Procedural History

- [2] In March 2020, the State charged Gamble with Level 5 felony nonsupport of a dependent. Thereafter, Gamble and the State entered into a plea agreement under which Gamble would plead guilty as charged, the State would dismiss a charge of Level 6 felony possession of methamphetamine in another case, and Gamble would be sentenced to six years, all suspended to probation. In January 2022, the trial court accepted the plea agreement and sentenced Gamble according to its terms. Gamble's probation conditions included keeping all appointments with his probation officer, undergoing drug screens, and completing all recommendations of the DeKalb County Alcohol/Drug Court Program.
- [3] One month later, in February 2022, the State petitioned to revoke or modify Gamble's probation, alleging that he tested positive for meth four times and missed a drug screen. The State supplemented the petition three times, alleging that Gamble (1) missed a second drug screen, (2) missed a probation appointment and a third drug screen, and (3) tested positive for five drugs, including meth. Gamble admitted violating the conditions of his probation as

alleged. The trial court ordered him to serve 180 days in jail (minus credit) and added as a condition of probation that he complete a halfway-house program upon release from jail.

[4] Gamble completed his jail sentence on May 23. Less than two months later, on July 19, the State again petitioned to revoke or modify Gamble's probation, alleging that he was dismissed from the halfway house and tested positive for alcohol. The State supplemented the petition five times, alleging that Gamble (1) missed a drug screen on July 19; (2) missed a probation appointment on August 1; (3) missed three drug screens (July 25, August 1, and August 3) and failed to call the call-in line twice (July 29 and August 2); (4) tested positive for alcohol and meth on August 8; and (5) missed a probation appointment on August 17 and failed to complete his intake at the Bowen Center. An evidentiary hearing was set for September 12. That day, the judge recused himself at Gamble's request, transferred the case to circuit court, and ordered Gamble to appear that day at the probation department. The State later filed a sixth supplemental petition, alleging that Gamble failed to appear at the probation department on September 12 as ordered.

[5] The circuit court held an evidentiary hearing in October. The court took judicial notice of Gamble's conditions of probation. Gamble's probation officer testified about Gamble's probation conditions and how he violated them. Specifically, the probation officer testified that Gamble was dismissed from the halfway house and missed multiple drugs screens and probation appointments. A

probation-department employee testified that Gamble tested positive for alcohol and meth.

[6] Defense counsel presented evidence that Gamble had paid off his nearly \$20,000 child-support arrearage. Defense counsel also questioned the witnesses about whether Gamble’s probation conditions prohibited him from consuming alcohol. The trial court found it wasn’t clear whether Gamble was prohibited from consuming alcohol but said it didn’t matter because Gamble violated other conditions:

The Rules of Probation are strange. Doesn’t ultimately affect testing positive for Methamphetamines; however, and under Order of the 28th day of April 2022, it was added to Mr. Gamble’s conditions of probation that he complete a half-way house program approved by the Probation Department. **And there was also, to my satisfaction, sufficient proof that he failed to report to probation as ordered on more than one (1) occasion.** . . . [That the probation conditions aren’t clear as to alcohol] doesn’t change the fact, though, that Mr. Gamble did a horrible job on probation. Horrible. **He didn’t report. He didn’t complete the half-way house. Tested positive for Meth.** That is not good. **And, in all honesty, that only addresses probation violations one (1) through six (6).** I’ve got more [probation violations] waiting in the wings.^[1] Leads me to believe that Mr. Gamble is, for all practical purposes, unsupervisable, given the track record that he has. I did go back and look at the Presentence Report. With his criminal history, I also noticed a failure to appear in Court and issuance of warrants, prior to this.

¹ At the time of the hearing, the State had supplemented the petition to revoke or modify Gamble’s probation three more times since September 12. The parties decided to address the original petition through the sixth supplemental petition. *See* Tr. p. 30.

You didn't even show up here on time. You [were] twenty (20) minutes late for this hearing.

Tr. pp. 55-56 (emphases added). The court revoked Gamble's probation and ordered him to serve four years (minus credit) in prison followed by two years of probation. The court said it was "sorely tempted" to order Gamble to serve all six years in prison but wanted to give him a chance. *Id.* at 56.

[7] Gamble now appeals.

Discussion and Decision

[8] Gamble appeals the revocation of his probation. "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). Although probationers are not entitled to the "full array of constitutional rights afforded defendants at trial," the Fourteenth Amendment's Due Process Clause imposes "procedural and substantive limits on the revocation of the conditional liberty created by probation." *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008) (quotation omitted).

[9] Gamble first contends the trial court "violated [his] right to procedural due process by not providing a sufficient statement as to the reasons for revoking probation and the evidence relied on." Appellant's Br. p. 11. "Due process requires a written statement by the fact-finder regarding the evidence relied upon and the reasons for revoking probation." *Wilson v. State*, 708 N.E.2d 32,

33 (Ind. Ct. App. 1999) (citing *Hubbard v. State*, 683 N.E.2d 618, 620 (Ind. Ct. App. 1997)). The requirement for a written statement “is a procedural device aimed at promoting accurate fact finding and ensuring the accurate review of revocation decisions.” *Hubbard*, 683 N.E.2d at 620-21 (footnote omitted). “[A] trial judge’s oral statement, if it contains the facts relied upon and reasons for revocation, and is reduced to writing in the transcript of the hearing, is sufficient to satisfy this requirement.” *Wilson*, 708 N.E.2d at 33; *see also Puckett v. State*, 956 N.E.2d 1182, 1186 (Ind. Ct. App. 2011) (“A transcript of the evidentiary hearing, although not the preferred way of fulfilling the writing requirement, is sufficient if it contains a clear statement of the trial court’s reasons for revoking probation.”).

[10] The State acknowledges that the trial court’s “Sentencing Order Upon Revocation of Probation” does not give reasons for revocation. Appellant’s Br. p. 13 (citing Appellant’s App. Vol. III pp. 45-46). However, it argues the court’s comments at the hearing are sufficient. We first note that although the court’s sentencing order does not give reasons for revocation, the court’s Amended Abstract of Judgment does. That is, the abstract identifies the “Revocation Reasons” as “Drug Screens, Failure to Report, Noncompliance with Court Ordered Programs.” Appellant’s App. Vol. III p. 51. Moreover, the court’s comments at the hearing clearly indicate the reasons for revocation:

[U]nder Order of the 28th day of April 2022, it was added to Mr. Gamble’s conditions of probation that he complete a half-way house program approved by the Probation Department. **And there was also, to my satisfaction, sufficient proof that he**

failed to report to probation as ordered on more than one (1) occasion. . . . Mr. Gamble did a horrible job on probation. Horrible. He didn't report. He didn't complete the half-way house. Tested positive for Meth.

(Emphases added). This is an adequate explanation of the reasons for revoking probation. *See Wilson*, 708 N.E.2d at 33-34.

[11] It is also clear from the trial court's comments that it relied on the evidence just presented by the State that Gamble missed probation appointments, failed to complete the halfway-house program, and tested positive for meth. *See Hubbard*, 683 N.E.2d at 621 ("Although the trial court did not issue a separate writing, the evidence it relied upon in revoking Hubbard's probation is contained in the transcript of the trial court's evidentiary hearing."). The abstract and transcript provide an adequate basis for appellate review and thus Gamble's due-process rights were not violated.

[12] Gamble next contends the trial court violated his due-process rights because it did not give him an "opportunity to [be] heard on the second step of the revocation proceeding" and present "argument as to disposition." Appellant's Br. p. 14. Probation revocation is a two-step process. *Woods*, 892 N.E.2d at 640. First, the court must make a factual determination that a violation of a condition of probation occurred. *Id.* If a violation is proven, then the trial court must determine whether the violation warrants revocation of the probation. *Id.* When a probationer admits to the violations, the court can proceed to the second step of the inquiry and determine whether the violation warrants

revocation. *Id.* However, even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation. *Id.*

[13] We first note that Gamble, who was represented by counsel, did not ask the trial court to present arguments that his violations did not warrant revocation. And he doesn't say on appeal what argument he would have made. In any event, this Court has already determined that when a defendant does not admit to violating probation and an evidentiary hearing is held, the defendant is not entitled to "another" opportunity to present evidence that the violation does not warrant revocation. *See Vernon v. State*, 903 N.E.2d 533, 537 (Ind. Ct. App. 2009) ("If the trial court had proceeded straight to the second step, **then** Vernon would have been entitled to present evidence that suggested that the violation did not warrant revocation. However, Vernon was afforded this opportunity during the evidentiary hearing at which he testified that he did not commit all the crimes with which he was charged."), *trans. denied*. The court did not violate Gamble's due-process rights by not giving him "another" opportunity to argue that his violations did not warrant revocation.

[14] Affirmed.

Tavitas, J., and Foley, J., concur.