

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alan J. Shonk,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 13, 2021

Court of Appeals Case No.
21A-CR-525

Appeal from the Pulaski Superior
Court

The Honorable Crystal A. Kocher,
Judge

Trial Court Cause No.
66D01-1901-F6-18

Najam, Judge.

Statement of the Case

- [1] Alan J. Shonk appeals the trial court's revocation of his probation. Shonk raises one issue for a review, namely, whether the State presented sufficient evidence to demonstrate that he was on probation at the time he committed a subsequent offense.
- [2] We affirm.

Facts and Procedural History

- [3] On February 4, 2020, Shonk agreed to plead guilty to possession of paraphernalia, as a Class A misdemeanor. On June 23, the trial court accepted Shonk's guilty plea, entered judgment of conviction, and sentenced him to a term of 365 days. The court then gave Shonk credit for 150 days of time served and ordered him to serve the remaining 215 days on probation. As a condition of probation, the court ordered Shonk to engage in "lawful behavior without arrest" and to not "illegally use or possess controlled substances." Appellant's App. Vol. 2 at 128-29.
- [4] On September 7, the State received a report that Shonk had engaged in "tumultuous conduct." *Id.* at 137. As a result, on September 22, the State filed a petition to revoke Shonk's placement on probation. In that petition, the State alleged that Shonk had committed the new offense of disorderly conduct.
- [5] Thereafter, on October 12, Deputy Phillip Foerg with the Pulaski County Sheriff's Department arrested Shonk based on an allegation that Shonk had

stolen appliances from a woman's home. During a search subsequent to the arrest, Deputy Foerg located methamphetamine and paraphernalia in Shonk's pocket. The State then filed a second petition to revoke Shonk's placement on probation in which the State alleged that Shonk had committed the new offenses of theft, possession of methamphetamine, and possession of paraphernalia.

[6] The trial court held a fact-finding hearing on the State's petitions. In support of the first petition, the State presented the testimony of Officer Brian Gaillard with the Winamac Police Department. Officer Gaillard testified that, on September 7, he had responded to a report of "yelling and screaming" coming from inside the trailer that Shonk shared with a woman. Tr. Vol. 2 at 33. But Officer Gaillard testified that, when he arrived, he did not observe any of the alleged behavior. In support of the second petition, the State presented as evidence the testimony of Deputy Foerg. Deputy Foerg testified as to the events that had occurred on October 12, including his discovery of methamphetamine and paraphernalia in Shonk's pocket.

[7] Following the hearing, the court concluded that the State had failed to present sufficient evidence to demonstrate that Shonk had committed disorderly conduct, and, as a result, the court denied the State's first petition. However, the court determined that the State had shown by a preponderance of the evidence that Shonk had violated the terms of his probation as alleged in the second petition. Accordingly, the court revoked Shonk's placement on

probation and ordered him to serve the balance of his previously suspended sentence. This appeal ensued.

Discussion and Decision

- [8] Shonk appeals the trial court’s revocation of his probation. As our Supreme Court has explained:

Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation actually occurred. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Second, if a violation is found, then the trial court must determine the appropriate sanctions for the violation. *Id.*

Heaton v. State, 984 N.E.2d 614, 616 (Ind. 2013). We review a trial court’s revocation of probation for an abuse of discretion. *See id.*

- [9] On appeal, Shonk asserts that the State failed to present sufficient evidence to support the revocation of his probation. Shonk does not dispute that the State proved by a preponderance of the evidence that he possessed methamphetamine and paraphernalia on October 12, 2020. *See Appellant’s Br.* at 9. However, Shonk contends that the State failed “to show [he] was on probation” at that time, as required by Indiana Code Section 35-38-2-3. That statute provides that the court may revoke a person’s probation if the person “has violated a condition of the probation during the probationary period.” Ind. Code § 35-38-2-3(a)(1) (2021).

[10] Shonk specifically contends that, “even though the chief probation officer of Pulaski County was present” at the fact-finding hearing, “the State failed to call her as a witness or present any other evidence that Shonk was on probation at the time of his violation or that the offense violated the specific conditions of his probation.” Appellant’s Br. at 10. We acknowledge that the State did not present testimony or documents regarding whether Shonk was on probation at the time he possessed methamphetamine and paraphernalia or of the specific terms of his probation.

[11] However, a trial court may take judicial notice of the records of an Indiana court on its own motion at any stage of the proceeding. *See* Ind. Evid. Rule 201. Here, it is apparent that the trial court took judicial notice of its own record in this case, which includes the plea agreement as well as the court’s order in which the court accepted the plea and sentenced Shonk. Indeed, in a petition to revoke probation, the records of the underlying proceeding are necessarily part of the record. Further, Shonk has included those documents in the appendix on appeal, which indicates that those documents were part of the record in the probation revocation proceeding.¹

[12] The relevant documents demonstrate that, after Shonk pleaded guilty, the court sentenced him to 215 days probation, which term began on June 3, 2020. *See*

¹ Shonk does not assert that the court erroneously took judicial notice of its own records, denied him an opportunity to be heard on those records, or otherwise explain why those records are a part of the record on appeal if the court did not take judicial notice of them during the probation proceeding.

Appellant's App. Vol. 2 at 128. Further, the court's order accepting the guilty plea outlines the terms of Shonk's probation, including a requirement that Shonk not "illegally use or possess controlled substances." *Id.* at 129.

[13] In addition to those documents, the testimony at the hearing demonstrates that Shonk possessed methamphetamine and paraphernalia on October 12, 2020, which was less than 215 days after his probationary term began. That testimony, taken together with the record in the case, is sufficient to demonstrate that Shonk was on probation at the time he possessed methamphetamine and paraphernalia and that his possession of those items violated a term of his probation. We therefore affirm the trial court's revocation of Shonk's probation.

[14] Affirmed.

Riley, J., and Brown, J., concur.