

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brad W. Widener,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 16, 2023

Court of Appeals Case No.
22A-CR-2713

Appeal from the Ripley Circuit
Court

The Honorable W. Gregory Coy,
Special Judge

Trial Court Cause No.
69C01-1909-F4-9

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issue

- [1] Brad Widener pleaded guilty to Level 4 felony dealing in methamphetamine and Level 6 felony failure to register as a sex offender, and the trial court sentenced him to twelve years fully suspended to probation. The State later alleged Widener had violated his probation. Following a fact-finding hearing, the trial court found Widener had violated the terms of his probation and revoked two years and 323 days of his previously suspended sentence. Widener appeals, arguing the trial court abused its discretion in finding he had violated his probation and in imposing a sanction. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

- [2] In 2020, Widener pleaded guilty to Level 4 felony dealing in methamphetamine and Level 6 felony failure to register as a sex offender, and the trial court sentenced him to twelve years fully suspended to probation. His terms of probation required that he not use alcohol or other controlled substances and submit to requested drug screens. In January 2022, Widener admitted he violated his probation by using methamphetamine. His probation was revoked, and he was ordered to serve 180 days in the Indiana Department of Correction (“DOC”) and eighteen months of in-home detention. Widener was released from the DOC on May 13, 2022, and began serving his in-home detention.

[3] In August 2022, the State filed a petition alleging Widener had violated the terms of his in-home detention by submitting a urinalysis drug screen on August 3 that was confirmed positive for opiates—specifically, codeine—for which Widener did not have a prescription.¹ Widener denied the allegations.

[4] At the start of the fact-finding hearing on October 14, Widener requested the court order a hair follicle test. Widener said he would pay for the test and asserted that a hair follicle test could “show results for up to ninety (90) days.” Transcript of Evidence, Volume 2 at 11. The State objected. The trial court denied the request and proceeded with the hearing.

[5] The director of Ripley County Court Services testified that probation officer Cody Tillison administered an instant urinalysis drug screen to Widener in the Court Services’ office on August 3. The screen returned preliminarily positive for morphine. The sample was then sent to a toxicology laboratory for confirmation. The confirmation test was positive for codeine. The director testified that her understanding of the urinalysis and the hair follicle tests was that there are “difficulties on comparing them as you would compare apples to apples” because they are “two different type[s] of tests, with two different type[s] of cutoffs[.]” *Id.* at 18.

¹ The petition also alleged Widener had not fulfilled his financial obligations. The trial court made no findings about this allegation.

[6] Widener also testified. He denied using drugs or alcohol and stated he took a second urinalysis drug screen on August 4 that was negative. He also stated he did not have any prescription medication. He contended, however, there was “another explanation for [the positive result] that could be proven” by a hair follicle test. *Id.* at 20. When asked by the court why he thought the test was incorrect, Widener explained:

[T]o my knowledge, it had to come from some kind of food seasoning that I was eating[.] My fiancé[e] . . . made the meals. She cooked with Mrs. . . . Dash, which is a seasoning and it does contain poppy seeds and . . . sesame seeds.

Id. at 22. Widener offered three articles discussing that the ingestion of poppy seeds can lead to positive test results for heroin or morphine.² Widener summarized the content of those articles:

[They] show that there is a chance that using poppy seeds or items containing poppy seeds can provide unreliable urinalysis drug screens, which . . . goes back to our point of requesting the hair follicle test.

Id. at 23.

² See Exhibit Index, Volume 3 at 13-15 (online article from Winchester Hospital titled “True or False: Eating Poppy Seed Pastries Can Lead to a Positive Drug Test for Heroin”); 16-19 (article from the Journal of Analytical Toxicology, Vol. 27, October 2003 titled “The Determination of Morphine in Urine and Oral Fluid Following Ingestion of Poppy Seeds”); and 20-33 (Final Report from Office of Aerospace Medicine dated June 2005 titled “Poppy Seed Consumption or Opiate Use: The Determination of Thebaine and Opiates of Abuse in Postmortem Fluids and Tissues”).

[7] The trial court found the State had proved by a preponderance of the evidence that Widener had violated the terms of his probation by “using a medication [for] which he had no prescription.” *Id.* at 25. Offering argument about the sanction, Widener asked the court to consider when issuing a sanction “that this could be something that was not an accurate drug screen[,]” an issue “we were not able to explore[.]” *Id.* at 27.

[8] The trial court stated it was “not ignoring what [Widener] claims to be the case that . . . there could be an issue with the . . . screen, but the simple fact of the matter is the . . . preponderance of the evidence shows he’s got yet another violation[.]” *Id.* at 30. But the court noted the “pretty good result” Widener received at his initial sentencing and also noted the court had tried “to take into consideration some of the issues that Mr. Widener[] had to deal with . . . in the recent past” by not making the sanction for his first probation violation a “straight two-year sentence[.]” *Id.*

So, the Court’s order here is going to be to revoke that portion [of] the previous order . . . that would have allowed him to serve that eighteen (18) months on in-home [detention]. Whatever he had left to serve on in-home [detention] is to be converted to serving that time in jail and then, also, the Court is gonna revoke an additional two years of his previously suspended sentence.

Id. at 30-31. Widener now appeals.

Discussion and Decision

I. Standard of Review

[9] 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). Once a trial court orders probation, the judge is given considerable leeway in deciding how to proceed and may revoke probation if a violation occurs. *Id.*

[10] Probation revocation is a two-step process. First, the trial court must make a factual determination that a violation of a condition of probation occurred. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Second, the court must determine whether the violation warrants revocation of probation. *Id.* When the trial court determines revocation is appropriate, Indiana Code section 35-38-2-3(h) provides the trial court may order one or more of several sanctions, including the execution of all or part of the original suspended sentence. *Holsapple v. State*, 148 N.E.3d 1035, 1042 (Ind. Ct. App. 2020).

II. Revocation of Probation

A. Proof of Violation

[11] A probation revocation proceeding is civil in nature, and therefore, the State must prove the alleged violation by a preponderance of the evidence. *Smith v. State*, 727 N.E.2d 763, 765 (Ind. Ct. App. 2000). When the sufficiency of evidence is at issue, “we use the same standard as in any other sufficiency question[,]” *id.*, and consider only the evidence “most favorable to the judgment without reweighing that evidence or judging the credibility of the

witnesses[.]” *Woods*, 892 N.E.2d at 639. We will affirm a probation revocation “[i]f there is substantial evidence of probative value to support the trial court’s decision that a defendant has violated any terms of probation[.]” *Id.* at 639-40.

[12] Widener claims the trial court erred in determining he violated the terms of his probation because he denied ingesting any drugs and offered an alternative explanation for his positive test. This is a classic request for us to reweigh the evidence, and we decline to do so. *See id.* at 639. In *Cox v. State*, the Indiana Supreme Court held evidence of a urinalysis conducted by an independent toxicology laboratory showing the defendant tested positive for marijuana use was “sufficient evidence to support the trial court’s revocation” decision. 706 N.E.2d 547, 552 (Ind. 1999). Here, too, the State introduced evidence of a urinalysis performed by an independent toxicology lab showing Widener tested positive for codeine. Widener testified he did not have a prescription for codeine. As the trial court found, this toxicology report proves by a preponderance of the evidence that Widener violated the condition of his probation that he not use controlled substances.

[13] Widener also claims he was “denied th[e] opportunity” to take a hair follicle test to prove his innocence. Appellant’s Brief at 10. We disagree. The court declined to order such a test, but Widener offered to pay for the test himself and nothing prevented Widener from seeking a hair follicle test on his own. Moreover, Widener claimed at the hearing that a hair follicle test could “show results for up to ninety (90) days[.]” Tr., Vol. 2 at 11, but the revocation hearing

was held more than ninety days after Widener's positive test. Widener's own assertions cast doubt on the reliability of any such test conducted at that point.

[14] In sum, there is substantial evidence of probative value to support the trial court's decision that Widener violated a term of his probation.

B. Sanction

[15] If the trial court finds the defendant violated the conditions of probation, the court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h). The decision to revoke probation is reviewed for an abuse of discretion. *Prewitt*, 878 N.E.2d at 188. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances of the present case. *Id.* The selection of an appropriate sanction will depend on the severity of the defendant's probation violation. *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013).

[16] Widener claims the revocation of part of his previously suspended sentence was an abuse of discretion because his violation was “relatively minor[.]” Appellant's Br. at 11. But Widener was serving a fully suspended sentence for a Level 4 felony drug dealing conviction. His probation had been revoked previously because he tested positive for drugs. And within a few months of being released from incarceration as part of that first revocation, he had this positive test. Widener has been shown considerable leniency already, and he was shown additional leniency this time, with only *part* of his previously

suspended sentence being revoked. As this was Widener's second violation within approximately two years and his crime and both of his violations involved drugs, it was not an abuse of discretion for the trial court to determine a longer period of incarceration was warranted as a sanction.

Conclusion

[17] The trial court did not abuse its discretion in determining Widener violated his probation or in revoking part of his previously suspended sentence.

Accordingly, the trial court's judgment is affirmed.

[18] Affirmed.

Crone, J., and Kenworthy, J., concur.