

MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Davunta D. Sturghil,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 7, 2022

Court of Appeals Case No.
21A-CR-1407

Appeal from the Allen Superior
Court

The Honorable Samuel Keirns,
Magistrate

Trial Court Cause No.
02D06-2010-F5-379

Darden, Senior Judge.

Statement of the Case

[1] Davunta D. Sturghil appeals the revocation of his probation, as well as the sanction imposed by the trial court for his probation violation. We affirm.

Issues

- [2] Sturghil raises two issues, which we restate as:
- I. Whether there is sufficient evidence to support the trial court's judgment.
 - II. Whether the trial court erred in ordering Sturghil to serve two years of his previously suspended sentence.

Facts and Procedural History

- [3] Pursuant to a plea agreement with the State, Sturghil pleaded guilty to battery of a public safety officer resulting in bodily injury, a Level 5 felony.¹ In exchange, the State dismissed a Level 6 felony charge. The trial court accepted the parties' agreement.
- [4] On February 4, 2021, per the plea agreement, the trial court sentenced Sturghil to five years in the Department of Correction ("DOC"), but the trial court suspended the entire sentence. The trial court instead ordered him to serve a four-year term of probation. The trial court stated that Sturghil would be "subject to the standard conditions of probation and special conditions of probation" Appellant's App. Vol. II, p. 15.
- [5] In addition, the trial court directed that for the first six months of probation, Sturghil would be on "Community Control." *Id.* at 14. Probationers on Community Control are subject to the "highest levels of supervision." Tr. Vol.

¹ Ind. Code § 35-42-2-1 (2020).

1, p. 16. As a result, they are screened for home detention at the county's community corrections office and must participate in the home detention program, in addition to adhering to standard probation requirements.

[6] Also on February 4, 2021, Sturghil reviewed and signed a document entitled "Order of Probation," which contained the standard conditions of probation. Appellant's App. Vol. II, p. 13. The Order of Probation's standard conditions included the following: "You shall behave well and report for supervision as instructed." *Id.* The document further contained the following affirmation, signed by Sturghil:

I have read or had read the contents of this document read[sic] to me, have received a copy of same, and acknowledge that I understand these rules as conditions of my probation. I understand that a failure to obey any condition of probation means that I can be sent to prison.

Id.

[7] Sturghil was later released from jail on February 4, 2021, the day of his sentencing, but he did not report to probation as ordered. As a result, Kristin Litzenberg of the Allen County Adult Probation Department scheduled an in-person meeting with him for February 11, 2021; again, he failed to appear and did not call her. She eventually located and made contact with him through his father and his father's fiancée.

[8] Sturghil finally reported to the probation office on February 18, 2021. At that meeting, Litzenberg again explained to him the rules of the probation program,

including how to check-in with the office. In addition, Sturghil reviewed and signed a document entitled “Consent to Participate in the Home Detention Program.” *Id.* at 17. The document stated that the home detention screening session, which Litzenberg had scheduled for him, would be held on February 24, 2021. The document also listed a date for a potential trial court hearing, which Litzenberg explained would be necessary only if Sturghil failed to get screened for home detention in a timely manner. Litzenberg further informed Sturghil that he would be required to meet with her on a weekly basis until he was enrolled in the home detention program, at which time an ankle monitor would be installed and activated.

[9] Sturghil failed to appear for his February 24, 2021, home detention screening appointment. Subsequently, Litzenberg met with Sturghil on March 1, 2021, and arranged for him to immediately go to the community corrections office for home detention screening. When Sturghil arrived at the office, he was placed with a group of other applicants. He and the other applicants were directed to fill out a booklet with information about themselves and their residences, with the understanding that afterwards they would then meet individually with a community corrections employee to go over the information. A community corrections employee later noticed that Sturghil had left without completely filling out the packet and did not meet with him. Litzenberg was notified that Sturghil had left without completing the screening process.

[10] Litzenberg scheduled another meeting with Sturghil, to be held on March 5, 2021, but that meeting did not occur either. At the hearing for the revocation of

his probation, Sturghil claimed that he had emailed Litzenberg to inform her that he missed the meeting because he was ill on that day. However, the testimony is somewhat self-serving, and no email documentation was presented at the hearing. Litzenberg rescheduled another meeting for March 8, 2021; however, he failed to appear at that meeting as well.

[11] On March 10, 2021, the State filed a verified petition for revocation of probation. The State, via a probation officer, alleged that Sturghil had not reported for supervision as directed by probation staff and had not completed the home detention screening process. The trial court determined the State's petition was supported by sufficient probable cause and directed the clerk to issue an arrest warrant. Sturghil was arrested almost two months later; apparently without any further contact or follow-up by him with his probation officer or the probation department.

[12] The trial court held an evidentiary hearing on the State's petition. After the hearing, the trial court issued an order stating, in relevant part:

Court finds by preponderance of evidence the defendant violated the terms and conditions of probation as contained in the petition. The suspended sentence is ordered modified to five (5) years Indiana Department of Correction, two (2) years executed, three (3) years suspended, three (3) years probation as ordered by the Court on February 4, 2021.

Appellant's App. Vol. II, p. 29. This appeal followed.

Discussion and Decision

I. Revocation of Probation

- [13] Probation is an alternative to commitment in the DOC. *Lightcap v. State*, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). A defendant is not entitled to serve a sentence on probation. *Id.* Rather, probation is “a matter of grace.” *Gilfillen v. State*, 582 N.E.2d 821, 824 (Ind. 1991). “And once the trial court extends this grace and sets its terms and conditions, the probationer is expected to comply with them strictly.” *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008). The terms and conditions of probation are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005).
- [14] Sturghil claims that there is insufficient evidence to sustain the trial court’s revocation of his probation. Probation revocation is a two-step process. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). First, the court must make a factual determination that a violation of a condition of probation has actually occurred. *Id.* If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.*
- [15] When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Sanders v. State*, 825 N.E.2d 952, 954-55 (Ind. Ct. App. 2005), *trans. denied*. If there is substantial evidence of

probative value to support the trial court's decision that a defendant has violated any terms of probation, the reviewing court will affirm the trial court's judgment. *Woods*, 892 N.E.2d at 639-640.

[16] Sturghil argues that he did not willfully fail to report to probation supervision or for his home detention screening, noting that he did appear at some appointments. We disagree. Sturghil pleaded guilty to a crime of violence and was placed on a six-month term of Community Control as part of his four-year term of probation. Thus, during the first six months of his term of probation, he was required to be screened for, and to comply with the terms of, a home detention program in addition to obeying the standard rules of probation. Sturghil was repeatedly informed, orally and in writing, that he was obligated to report to a probation officer and to complete the community corrections screening program.

[17] The evidence most favorable to the judgment establishes that Sturghil failed to report as ordered by the trial court to probation after he was released from jail on February 4, 2021, and he subsequently failed to appear for several appointments with probation officer Litzenberg. Finally, she had to make contact with his family and seek their help to persuade him to finally appear for an initial appointment on February 18, 2021, two weeks after his release from jail. Sturghil later missed his appointment to be screened for the home detention program. After Litzenberg arranged for Sturghil to go to the community corrections office directly after an appointment with her, he left that office without completing the screening process. He subsequently missed two

more appointments with Litzenberg before the State filed its petition to revoke his probation.

[18] Sturghil's two kept meetings with Litzenberg do not come close to outweighing his numerous other absences or his failure to complete the community corrections home detention screening as ordered. Indeed, his repeated failures to meet with Litzenberg and to be properly screened for the community corrections program frustrated the goal of the trial court's probation sentence: to allow him to remain in the community, subject to close monitoring.

[19] Sturghil testified in his own defense at the probation revocation hearing, and he presented excuses for missing meetings and for leaving the community corrections office's home detention screening early. Nevertheless, he offered no reasonable explanation as to why he did not contact his probation officer for two months after the State filed a petition to revoke his probation. Further, the trial court was not required to accept or give credence to his self-serving testimony. There is overwhelming evidence to support the trial court's conclusion that Sturghil had violated the terms and conditions of his probation. *See Lind v. State*, 550 N.E.2d 823, 824 (Ind. Ct. App. 1990) (sufficient evidence supported finding of probation violation; probationer missed two counseling appointments, in violation of terms and conditions of probation), *trans. denied*.

II. Sanction for Probation Violation

[20] Sturghil next claims the trial court should not have ordered him to serve two years of his previously suspended sentence, characterizing his misconduct as

“mere technical violations.” Appellant’s Br. p. 11. If a trial court determines that a person has violated a term or condition of probation within the probationary period, the court may impose one 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.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h) (2015).

[21] We review a trial court’s selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[22] We reject Sturghil’s claim that his violations were merely technical. To the contrary, he failed or refused to comply with the most basic and easily-fulfilled requirements for a probationer: meeting regularly with a probation officer and completing a home detention screening process. His failure to meet those requirements meant that the probation department and the trial court could not determine whether he was complying with the other terms and conditions of his probation. Further, Sturghil’s noncompliance specifically frustrated the trial court’s determination that he needed to be placed on Community Control, with extra oversight, for the first six months of his probationary term. Finally,

Sturghil reviewed and signed a document that advised him he could be sent to prison for a failure to obey any condition of probation. The trial court's imposition of an executed sentence was not an abuse of discretion.

Conclusion

[23] For the reasons stated above, we affirm the judgment of the trial court.

[24] Affirmed.

Najam, J., and Riley, J., concur.