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ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

JARON L. RATLIFF,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 48A02-0911-CR-1141
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0404-FB-215

April 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Jaron Ratliff appeals the revocation of his probation as well as the sentence imposed thereon. Ratliff raises two issues which we restate as: 1) whether the trial court erred in admitting documentary evidence showing that Ratliff's urine tested positive for marijuana and cocaine metabolites, and 2) whether the trial court abused its discretion when it ordered Ratliff to serve his previously suspended sentence. Concluding the documentary evidence was substantially trustworthy and the trial court did not err in ordering Ratliff to serve his previously suspended sentence, we affirm.

Facts and Procedural History

In March 2005, Ratliff pleaded guilty to dealing in cocaine as a Class B felony. The trial court sentenced him to ten years, with four years suspended to probation. Ratliff was released from prison in July 2007. He tested positive for marijuana in February 2009. The trial court found Ratliff violated his probation and ordered him to continue on probation, obtain a substance abuse evaluation, obtain employment of at least thirty-five hours per week, and work toward his GED.

Later in February 2009, Ratliff submitted a urine sample to Madison County Probation Officer Jerry Considine. Lab testing revealed the presence of marijuana as well as cocaine metabolites in Ratliff's urine. Considine filed a Notice of Probation Violation alleging Ratliff violated the terms and conditions of his probation when he tested positive for marijuana and cocaine metabolites. An amended notice of violation alleged Ratliff had failed to show proof to the probation department that he 1) had obtained his substance abuse evaluation, 2) was working toward his GED, and 3) had

obtained employment as ordered after his first probation violation. A second amended notice of violation alleged Ratliff had failed to timely report to the probation department and pay his probation fees.

On August 22, 2009, law enforcement officers were dispatched to an Anderson residence where Ratliff was reportedly holding a gun to his girlfriend's head in an SUV. Anderson Police Department Officer Amber Miller arrived at the scene. When he saw the police car, Ratliff took off in his SUV. Anderson Police Department Officer Chad Purciful took the lead in the chase, in which Ratliff and the police officers reached speeds in excess of 90 miles per hour and disregarded stop signs and lights. The pursuit ended when Ratliff's SUV overheated on State Road 32. A search of the vehicle revealed marijuana and an unloaded firearm in the center console. Ratliff had $1,100 in cash and cocaine on his person.

The probation department amended its notice of violation a third time to include the commission of the following offenses: resisting law enforcement as a Class D felony; possession of cocaine as a Class D felony; possession of marijuana as a Class A misdemeanor; carrying a handgun without a license as a Class A misdemeanor; and unlawful possession of a firearm by a serious violent felon as a Class B felony. The probation department also alleged Ratliff knowingly possessed a handgun in violation of his probation.

The trial court held a probation revocation hearing in September 2009. Probation Officer Considine testified Ratliff gave a urine sample in Considine's presence on April 21, 2009. Considine explained the urine sample was kept in a secure environment in the

Madison County Probation Department until a courier from Witham Toxicology Laboratory picked it up and transported it to Witham for testing. The trial court admitted into evidence as State's Exhibit 2 an affidavit from Jeff Retz, the certifying scientist from Witham. The affidavit explained the procedures Retz uses to test urine screens and included Ratliff's test results.[1] Also at the hearing, Ratliff admitted he had been "doing a lot of drugs" while on probation. Transcript at 70.

Following the hearing, the trial court found that Ratliff violated the terms and conditions of his probation. Specifically, the court stated as follows at the hearing:

> The Court finds by a preponderance of the evidence that the defendant violated the conditions of his probation in that he did not abstain from the use of alcoholic beverages and/or illicit drugs and that he tested positive for marijuana and cocaine; he failed to show proof to probation department within 28 days of being placed on probation that he obtained a substance abuse evaluation; there's no proof - - his testimony was, but there was no proof to probation that he was working towards getting a G.E.D. He failed to report to probation timely, failed to pay probation fees. The Court denies the request to take under advisement the allegations of the new charges and finds in fact by preponderance of the evidence that he did commit the crime of resisting law enforcement; possession of cocaine; possession of marijuana; carrying a handgun without a license; [and] unlawful possession of a firearm by a serious violent felon . . . .

Transcript at 73. The trial court revoked Ratliff's probation and ordered him to serve the entirety of his previously suspended sentence. Ratliff appeals the revocation of his probation as well as the sentence imposed.

Discussion and Decision

The ability to serve a sentence on probation has been described as a "matter of grace" and a "conditional liberty that is a favor, not a right." Marsh v. State, 818 N.E.2d 143, 146 (Ind. Ct. App. 2004) (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)).

[1] The Volume of Exhibits indicates that State's Exhibit 2 could not be located for inclusion in the Volume.

A probationer faced with a petition to revoke his probation is therefore not entitled to the full panoply of rights he enjoyed prior to the conviction. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). The rules of evidence do not apply in a revocation proceeding, and the State's burden of proof is lower, as the State need prove an alleged violation of probation by only a preponderance of the evidence. Id.

I. Documentary Evidence

Ratliff first argues that the trial court erred in admitting into evidence Retz's affidavit, which included Ratliff's urine drug screen results. Specifically, Ratliff contends the affidavit was hearsay evidence and its admission denied him his due process right to confront and cross-examine witnesses against him.

Though not cited by Ratliff, Reyes v. State, 868 N.E.2d 438 (Ind. 2007), is instructive. In the Reyes case, Reyes, like Ratliff, argued on appeal that the trial court erred in admitting into evidence at his probation revocation hearing Jeff Retz's affidavit, which included Reyes's urine test results. Reyes, like Ratliff, argued that the affidavit violated his due process right to confront witnesses against him. After reviewing the facts of the case, the Indiana Supreme Court adopted the substantial trustworthiness test as the standard by which a trial court should judge the admission of evidence challenged by a probationer on confrontation grounds. Id. at 439. The Supreme Court explained that the substantial trustworthiness test requires that the trial court evaluate the reliability of the hearsay evidence. Id.

In Reyes, the evidence in Retz's affidavit revealed Retz has a Bachelor of Science degree in Chemistry and has been the Scientific Director of the Witham Lab since 1992.

Before he was employed at Witham Lab, Retz was a Laboratory Supervisor for the Indiana State Department of Toxicology. In his capacity as Scientific Director, is "familiar with the procedures employed to ensure the chain of custody of samples and the validity of the test procedures employed by" Witham Lab. Id. at 442. Retz reviewed "all of the records in this laboratory in regard to the lab sample received which was labeled as a sample taken from: George Reyes, taken on 8/16/2005[.]" Id. In the affidavit, Retz concluded Reyes had used cocaine within seventy-two hours of the collection of Reyes's urine sample. Id.

Under these facts and circumstances, the Indiana Supreme Court concluded that Retz's affidavit concerning Reyes's cocaine use was reliable and supported a finding that Retz's affidavit was substantially trustworthy. Id. Here, we do not have Retz's affidavit which was introduced into evidence at the probation revocation hearing because it could not be located. However, it is likely that, except for the individual test results, the affidavit in the Ratliff case contained the same information as the affidavit in Reyes and was, therefore, reliable.

Further, even if the affidavit was not reliable, and the trial court erred in admitting it into evidence, the trial court's statement at the probation revocation hearing indicates that its decision to revoke Ratliff's probation was based, at least in part, on its findings Ratliff failed to get a substance abuse evaluation, failed to work towards his G.E.D., failed to report to his probation officer, and failed to pay probation fees. The court also based the revocation on the five additional crimes Ratliff committed. In addition, Ratliff admitted using drugs while he was on probation. Proof of any one violation is sufficient

to revoke probation. Figures v. State, 920 N.E.2d 267, 273 (Ind. Ct. App. 2010). Based upon the additional violations, including Ratliff's admission that he was using drugs while he was on probation, any error in the admission of the affidavit was harmless. See id.

II. Sentencing

Ratliff also argues that the trial court erred in ordering him to serve his previously suspended sentence. We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Figures, 920 N.E.2d at 271.

The facts of this case reveal that following Ratliff's release from prison and transition to probation, he repeatedly used drugs, failed to obtain employment, failed to work toward his GED, failed to timely report to the probation department, and failed to pay his probation fees. Further, after holding a gun to his girlfriend's head while on probation, Ratliff led police on a high speed chase that ended only when Ratliff's SUV overheated. When the police apprehended him, Ratliff had marijuana and a firearm in the vehicle and cocaine on his person. He was subsequently charged with three felonies and two misdemeanors. Based upon these facts, the trial court did not abuse its discretion in ordering Ratliff to serve his previously suspended sentence. See Sanders, 825 N.E.2d at 957 (holding the trial court had ample basis to order probationer to serve his suspended sentence).

Conclusion

The trial court did not err in admitting Retz's affidavit into evidence or in ordering Ratliff to serve his previously suspended sentence.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.