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IN THE
COURT OF APPEALS OF INDIANA

TERESA A. MILLS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-1012-CR-673
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0610-FC-53

July 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Teresa Mills challenges the sufficiency of the evidence to support the revocation of her probation. We affirm.

FACTS AND PROCEDURAL HISTORY

Mills was on probation after a conviction of dealing a schedule IV controlled substance, a Class C felony.[1] As a condition of her probation, Mills was to refrain from using illegal drugs.

On April 27, 2009, Mills admitted using marijuana. The trial court revoked 270 days of her probation and sent her to the Department of Correction. Sometime later, she again was released to probation.

On March 15, 2010, Mills again admitted using marijuana. The trial court revoked one year and ninety-five days of her probation. It ordered Mills to spend one year in the Department of Correction and the final ninety-five days on in-home detention. The Department of Correction released her to in-home detention on May 27, 2010.

On July 28, 2010, a caseworker went to Mills' house to investigate a report of drug use by Mills' housemate. The caseworker also tested Mills. Mills tested positive for cocaine. The probation department filed a petition to revoke probation a third time and a motion to convert Mills' home detention to imprisonment. The court granted the motion to convert the remainder of Mills' home detention to imprisonment and set a hearing as to the

[1]Ind. Code § 35-48-4-3(a)(1)(C).

probation revocation.

On October 25, 2010, Mills filed a motion asking for "an expert to analyze and interpret results of drug screens of Teresa Mills." (App. at 178.) The trial court denied this motion. Following a hearing, the trial court revoked the remaining five years of Mills' probation.

DISCUSSION AND DECISION

"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). In a probation revocation hearing, a violation of the terms of probation need be proven by only a preponderance of the evidence. *Thornton v. State*, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). In reviewing sufficiency of evidence to support a probation revocation, we review only the evidence most favorable to the judgment. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). After finding a probation violation, the trial court may continue the probation, extend it, or order execution of all or part of the suspended sentence. Ind. Code § 35-38-2-3(g). Trial judges have considerable leeway in determining how to proceed after ordering probation. *Prewitt*, 878 N.E.2d at 188. If we review those decisions too strictly, trial courts "might be less inclined to order probation to future defendants." *Id*. As a result, we review probation revocation decisions under an abuse of discretion standard. *Id*. A decision is an abuse of discretion when it "is clearly against the logic and effect of the facts and circumstances." *Id.*

Mills contends the State did not present adequate evidence that she violated her probation. Mills argues the results of the oral drug screen conducted on July 28, 2010, are inaccurate because the caseworker had not received formal training regarding how to conduct the test.[2] While it is true the caseworker did not have formal training on administering the drug test, she did receive instruction from co-workers about how to conduct the test and literature on interpreting the results. At trial, the caseworker described in detail how she administered the drug test, and Mills did not challenge the testimony on cross-examination.[3] The trial court stated, in response to a renewed motion for a toxicologist examination, "there's been no indication that the procedures of administering this test were in any way inadequate or inappropriate, quite frankly this [sic] appears that there's disagreement as to the result of the test." (Tr. at 39.) The positive drug test is sufficient evidence Mills violated

[2] Mills acknowledges we apply a relaxed standard for admissibility of evidence in probation revocation hearings. (*See* Br. of Appellant at 6) (citing Indiana Evidence Rule 101(c)(2)). Accordingly, she does not challenge the admission of the drug test result; rather she challenges the court's decision to revoke based thereon.

[3] Mills also believes the results of the test are faulty because she had never before tested positive for cocaine and she had passed other drug tests in the weeks preceding the oral drug test. We decline to hold her negative drug test on July 14 necessarily calls into question a positive drug screen two weeks later. Mills also states that she was rehabilitating herself at the time of the positive drug test in order to be reunited with her children; therefore, she had incentive not to begin using cocaine. While we applaud Mills' desire to reunite with her children, her desire does not impugn the validity of the drug test.

her probation. *See Carter v. State*, 706 N.E.2d 552, 554-55 (Ind. 1999) (affirming revocation of probation based on positive drug test results).

Affirmed.

BAKER, J., and BRADFORD, J., concur.