

Jeffrey Jinks appeals the revocation of his probation and the imposition of five years of the previously suspended six-year portion of his sentence. He presents the following restated issues for review:

1. Did the trial court err in determining that Jinks violated the conditions of probation?
2. Did the trial court err in imposing five years of the previously suspended six-years of his sentence?

We affirm.

On August 9, 2002, Jinks was charged with several crimes stemming from a vehicular accident that occurred on July 22, 2002. Ultimately, the State and Jinks entered into a plea agreement whereby Jinks pleaded guilty to operating a motor vehicle while intoxicated, causing death, a class C felony, and operating a motor vehicle while intoxicated, causing serious bodily injury, a class D felony. In exchange for his guilty plea, the State agreed to dismiss the remaining charges. On May 7, 2003, Jinks was sentenced to twenty years in prison, with fourteen years executed and six years suspended to probation, for the class C felony and eight years for the class D felony, with no time suspended. The court ordered the sentences to be served concurrently.

On January 1, 2009, Jinks began his six-year probation term. On November 9, 2009 Jinks was arrested by police officers at a Salvation Army store in Marion County, Indiana, where the officers found him passed out behind the wheel of a car with the engine running. The officers noted empty beer bottles in the car and observed one empty bottle on the pavement next to the car. After removing the keys from the ignition, the officers had to physically shake Jinks to awaken him. When he finally was roused, Jinks attempted several

times to start his car, notwithstanding that there was no key in the ignition. The officers observed that Jinks's eyes were red and watery, and that he was slow to react to questions. Jinks did not respond to the officers' verbal commands and eventually had to climb out of the car while holding onto the door to steady himself. Jinks admitted to the officers that he had consumed "a couple beers". *The Exhibits* at 3. The officers placed Jinks under arrest for public intoxication, a class B Misdemeanor

On November 13, 2009, a Notice of Probation Violation was filed alleging Jinks had committed the criminal offense of public intoxication and failed to meet his financial obligations.¹ A hearing was conducted on December 11, 2009. The trial court found that Jinks had violated the terms of his probation as asserted in the notice, revoked his probation, and imposed five years of the six-year suspended sentence.

1.

Jinks contends the trial court erred in determining that he violated the conditions of his probation. Probation revocation proceedings are civil in nature. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004). Therefore, the State is required to prove a violation by only a preponderance of the evidence. Ind. Code Ann. § 35-38-2-3(e) (West, Westlaw through 2010 2nd Regular Sess.); *Marsh v. State*, 818 N.E.2d 143. When reviewing the determination that a probation violation occurred, we neither reweigh the evidence nor reassess

witness

¹ Jinks had agreed to pay \$144.67 per month, but as of the time of the hearing, he had paid a total of only \$40.

credibility. *Marsh v. State*, 818 N.E.2d 143. Instead, we look at the evidence most favorable to the court's judgment and determine whether there is substantial evidence of probative value supporting the finding of violation. *Id.* If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate. *M.J.H. v. State*, 783 N.E.2d 376 (Ind. Ct. App. 2003), *trans. denied*.

At the revocation hearing, Jinks clearly admitted there was probable cause to arrest him for public intoxication and that such constituted a violation of the conditions of probation as alleged in the notice filed by the State. Upon appeal, Jinks does not challenge the finding of violation with respect to the public intoxication charge. Arguably, Jinks also admitted the other allegation of violation, i.e., that he failed to meet his monetary obligations. Regardless of whether he did or did not admit that allegation, however, Jinks claims the trial court erred in revoking on that basis because the State "introduced no written documentation (either original conditions or any subsequently modified terms) to support the fact Jinks had to, as probation conditions, pay any fees. In other words, there was no evidence to prove that the conditions Jinks was accused of violating were actually conditions of his probation."² *Brief of the Appellant* at 4-5.

It is well established that proof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation. *See, e.g., Bussberg v. State*, 827 N.E.2d 37 (Ind. Ct. App. 2005), *trans. denied*. Therefore, we need not address Jinks's contention

with respect to the allegation of nonpayment of fees. Revocation was proper premised upon the unchallenged finding of violation, i.e., the public intoxication arrest.

2.

Jinks contends the trial court erred in imposing five years of his suspended sentence. We note initially that in deciding Issue 1 above, we rejected the claim that there were no valid findings of violations of the conditions of probation. Even assuming for the sake of argument that the finding concerning the nonpayment of fees was invalid, the other finding of violation was valid. Thus, there is no merit to a claim that revocation was improper because there was no valid finding of violation upon which to base it.

After revoking probation, a trial court may execute all or part of the previously suspended sentence, subject to certain restrictions not applicable here. *Stephens v. State*, 818 N.E.2d 936 (Ind. 2004). We review the length of the executed sentence imposed to determine whether it was reasonable in view of the nature of the violations and the character of the offender. *Id.* We conduct this review under an abuse of discretion standard. *Sanders v. State*, 825 N.E.2d 952 (Ind. Ct. App. 2005), *trans. denied*.

Jinks's primary argument on this point is reflected in the following excerpt from his appellate brief:

Measuring the violations against the realm of possible violation[s], these violations were not serious enough to justify the imposition of a five-year period of incarceration. Probation violation sentences, although analyzed differently than the originally-imposed sentence may be on appeal, still may be so unjust in light of the totality of the circumstances that they represent an

2 Jinks concedes that “the condition that the probationer not commit another crime is automatically a condition of probation by operation of law.” *Brief of the Appellant* at 4 (citing *Benton v. State*, 691 N.E.2d 459 (Ind. Ct. App. 1998)).

abuse of discretion. In the instant case, the trial court's imposition of a five-year sentence constitutes and [sic] unduly harsh penalty for Jinks' [sic] failure to follow probation conditions[.]

Brief of the Appellant at 6. Put another way, Jinks contends that executing five years of the suspended sentence was too harsh a penalty for the violation he committed. We disagree. Jinks was found intoxicated and passed out behind the wheel of an automobile that was parked in a public parking lot with the engine running. The underlying conviction for which Jinks was sentenced involved a serious traffic accident caused by Jinks when he was operating a vehicle while intoxicated. One person died and two others were seriously injured as a result of that accident. In view of this, Jinks's public intoxication charge constituted a serious violation indeed. The trial court's decision to order Jinks to serve five years of the suspended six-year sentence was not an abuse of discretion.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.