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ATTORNEY FOR APPELLANT:

MICHAEL FRISCHKORN
Fortville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

BRIAN REITZ
Deputy Attorney General
Indianapolis, Indiana

FILED
Nov 28 2011, 10:20 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

JAMES C. LEWIS,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 48A02-1103-CR-178
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Rudolph R. Pyle, III, Judge
Cause No. 48C01-9904-CF-95

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

Following a probation hearing, James Lewis appeals the revocation of his probation and the imposition of the previously suspended portion of his sentence. Lewis raises two issues for our review: whether sufficient evidence supports the finding that he violated his probation, and whether the trial court abused its discretion in revoking the remaining five years of his suspended sentence. Concluding the evidence is sufficient, and the trial court did not abuse its discretion in imposing the previously suspended portion of Lewis's sentence, we affirm.

Facts and Procedural History

On April 19, 1999, the State charged Lewis with dealing in cocaine, a Class B felony, and failure to return to the scene after an accident, a Class C misdemeanor. A jury found Lewis guilty as charged. The trial court sentenced Lewis to fifteen years, ten of which to be executed and five of which to be suspended to formal probation with respect to the dealing in cocaine conviction, and sixty days executed with respect to the failure to return to the scene after an accident conviction. The trial court ordered Lewis to serve these sentences consecutively. Lewis began serving his sentence at the Indiana Department of Correction ("DOC") on March 16, 2001. Lewis served his sentence in the DOC until February 24, 2010, at which point he began probation. One of the conditions of his probation was that he not violate the law and that he behave well in society.

On November 17, 2010, due to unpaid child support payments, Lewis was taken into custody and sent to the Madison County Correctional Complex ("MCCC"). Upon arrival at MCCC, corrections officer Jerry Platt asked Lewis if he had any items in his possession to turn over before being searched. Lewis indicated he did not. During the

search, Lewis twice refused Officer Platt's request that Lewis raise both of his arms. Officer Platt then noticed a palm-sized black ball in Lewis's right hand, which he attempted to confiscate by grabbing Lewis's arm.

A physical struggle ensued, during which Lewis repeatedly attempted to flush the ball in a nearby toilet. Lewis eventually placed the ball in the toilet and activated the flushing mechanism, but corrections officer Jason Thompson, who joined the struggle, grabbed the ball out of the toilet before it flushed. Lewis later told Officer Thompson that the ball was given to him by another inmate who was with Lewis while he awaited transport to the MCCC. Madison County Sheriff's Department Officer Michael Ashby determined the item confiscated from Lewis contained loose tobacco, rolling papers, matches, and a green leafy substance, which a field test confirmed to be marijuana.

The trial court received a notice of violation of probation on November 24, 2010. The notice alleged Lewis had committed new offenses: possession of marijuana and trafficking with an inmate, both Class A misdemeanors. On February 23, 2011, the trial court found that Lewis violated his probation by committing the alleged criminal offenses. As a result, the trial court ordered Lewis to serve the remainder of his sentence in the DOC. Lewis now appeals the trial court's revocation of his probation and resultant sentence.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

A probation hearing is civil in nature, and thus the State need only prove the alleged violations by a preponderance of the evidence. Holmes v. State, 923 N.E.2d 479,

485 (Ind. Ct. App. 2010). We consider the evidence most favorable to the judgment without reweighing that evidence or judging the credibility of witnesses. Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). If there is substantial evidence of probative value to support the trial court's ruling, we will affirm. Holmes, 923 N.E.2d at 485.

B. Possession of Marijuana

To show that Lewis violated his probation, the State is required to prove by a preponderance of the evidence that Lewis knowingly or intentionally possessed pure or adulterated marijuana. See Ind. Code § 35-48-4-11. Lewis contends the evidence presented is insufficient to support the conclusion that he "knowingly or intentionally" possessed marijuana. Under Indiana Code section 35-41-2-2(b), "[a] person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Indiana Code section 35-41-2-2(a) provides that "[a] person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so."

Lewis argues that he was given the black ball by another inmate and he was unaware of its contents; therefore, the trial court erred in finding that he knowingly or intentionally possessed the marijuana ultimately discovered inside the black ball. We are not persuaded by this argument because in the case of both knowing and intentional conduct, the trial court may resort to reasonable inferences to determine if the requisite intent exists. McClendon v. State, 671 N.E.2d 486, 489 (Ind. Ct. App. 1996). It is, in essence, "merely an invitation for this court to engage in the forbidden reweighing of evidence." Id. We decline to do so.

There are factual circumstances in the record that support the trial court's finding that Lewis knowingly or intentionally possessed marijuana. First, Lewis accepted a black ball which contained a substance intended to be hidden from plain sight. Lewis accepted the black ball from another inmate, at which time Lewis himself testified he was aware that he was awaiting transport to MCCC. Furthermore, Lewis's conduct when Officer Platt attempted to search him suggests Lewis was aware that the contents of the ball were not allowed in MCCC. The relevant statute, Indiana Code section 35-48-4-11, allows the fact-finder to find the defendant committed the alleged violation if he "knowingly <u>or</u> intentionally" possessed marijuana.

Lewis's conduct once he arrived at the prison provides plenty of additional factual circumstances from which the fact-finder could have reasonably inferred that he knowingly or intentionally possessed marijuana. During an officer's initial search upon Lewis's arrival to MCCC, Lewis attempted to hide the black ball from the searching officer. When it became clear that the officer noticed the black ball, Lewis entered into a physical confrontation with the officer, during which he repeatedly attempted to flush the ball down a nearby toilet. If Lewis was not aware of, at minimum, a high probability that the ball contained a substance banned within MCCC, it seems unlikely he would engage in this sort of conduct during his initial search. The trial court took these facts into consideration and stated, "the defendant's behavior . . . itself . . . shows that he knew [bringing the object into MCCC] was wrong." Transcript at 35.

The sum of the circumstances in the record is sufficient to support the trial court's finding by a preponderance of the evidence that Lewis committed possession of marijuana and, as a result, violated his probation.

C. Trafficking with an Inmate

To prove Lewis violated his probation by committing trafficking with an inmate the State was required to show by a preponderance of the evidence that one of three scenarios occurred. Those three scenarios are presented in Indiana Code section 35-44-3-9(b):

> [A] person who, without the prior authorization of the person in charge of a penal facility . . . knowingly or intentionally:
>
> (1) delivers, or carries into the penal facility . . . with intent to deliver, an article to an inmate . . . of the facility;
>
> (2) carries, or receives with intent to carry out of the penal facility . . . an article from an inmate . . . of the facility;
>
> * * *
>
> (4) possesses in or carries into a penal facility . . . :
>
> (A) a controlled substance . . .
>
> commits trafficking with an inmate, a Class A misdemeanor.

Lewis makes two unavailing arguments in support of his contention that the trial court erred in finding that he committed trafficking with an inmate. First, he argues that he could not have committed the alleged violation because he did not actually deliver the black ball to a fellow inmate. Second, Lewis argues, presumably in regards to Indiana Code section 35-44-3-9(b)(1) and (2), that because no inmate was identified to whom Lewis planned to deliver the black ball, he could not have committed trafficking with an inmate. These arguments fail to take into account the circumstantial evidence presented, and ignore the possibility of guilt under Indiana Code section 35-44-3-9(b)(4).

Under Indiana Code section 35-44-3-9(b)(2), which requires the State to prove by a preponderance of the evidence that Lewis carried, or received with intent to carry out of the holding facility, an article from an inmate of that facility, Lewis's guilt requires essentially no inferences to be drawn at all. It is undisputed that he left the first penal

facility at which he was awaiting transport to MCCC with the black ball he received from another inmate in his possession. Thus, there is sufficient evidence of probative value to support the trier of fact's conclusion under Indiana Code section 35-44-3-9(b)(2).

Lewis claims to have been unaware that the black ball contained marijuana, and from that we presume he would argue he could not be found guilty of trafficking with an inmate under Indiana Code section 35-44-3-9(b)(4), which requires knowingly or intentionally carrying a controlled substance into a penal facility. However, we have already stated our agreement with the trial court's finding that Lewis knowingly possessed marijuana, and for those same reasons, Lewis could have been found guilty of trafficking with an inmate under Indiana Code section 35-44-3-9(b)(4).

For all of the foregoing reasons, we conclude the evidence presented by the State and the reasonable inferences to be drawn therefrom were sufficient to find by a preponderance of the evidence that Lewis trafficked with an inmate, and thus violated his probation.

II. Execution of Previously Suspended Sentence

A. Standard of Review

"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 witnesses." Sanders v. State, 825 N.E.2d 952, 954-55 (Ind. Ct. App. 2005), trans. denied. Probation is within the trial court's discretion, and is not a right to which a criminal defendant is entitled. Id. at 955. Once the trial court has ordered probation, the judge has considerable discretion in how to proceed. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). Accordingly, a trial court's sentencing decisions

for probation violations are reviewable using the abuse of discretion standard. Id. A trial court's decision is to be overturned under this standard where its decision is clearly against the logic and effect of the facts and circumstances. Id.

B. Revocation of Probation

Lewis argues that the trial court abused its discretion in ordering him to serve the entire portion of his previously suspended sentence upon revocation of his probation. Specifically, Lewis argues that the trial court failed to take into account any mitigating circumstances with which it was presented and only considered his original conviction and violation of probation. We disagree with Lewis and affirm the trial court's ruling.

Indiana Code 35-38-2-3(g)(3) provides:

> (g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:
>
> * * *
>
> (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Thus, given the finding that Lewis violated his probation, it was well within the trial court's statutory authority to revoke Lewis's probation and order execution of his entire previously suspended sentence.

The trial court is not required to consider mitigating circumstances, with one recognized exception not relevant here,[1] when imposing a sentence in a probation revocation proceeding. See Patterson v. State, 659 N.E.2d 220, 222 (Ind. Ct. App. 1995). This rule is consistent with trial courts' broad discretion in matters relating to a

[1] In Patterson, the court held that the probationer's mental state must be considered in a dispositional determination of probation revocation proceedings. See Patterson, 659 N.E.2d at 222. Lewis did not raise his mental state as an issue at the probation hearing, nor does he address it on appeal. Thus we do not address it here, either.

defendant's probation. Lewis's argument that we should consider various mitigating factors is an invitation to reweigh the evidence presented to the trial court. The standard of review for a revocation of probation does not permit us to do so.

Given that the trial court's ruling is expressly authorized by statute, we conclude that it did not abuse its discretion in ordering Lewis to serve the remainder of his previously suspended sentence.

Conclusion

We conclude the record is sufficient to support the finding that Lewis violated his probation and that the trial court's resulting order for Lewis to execute the remaining portion of his previously suspended sentence was not an abuse of discretion.

Affirmed.

BARNES, J., and BRADFORD, J., concur.