

Case Summary

Julie Smitson appeals the revocation of her probation. We affirm.

Issue

Smitson raises two issues, which we consolidate and restate as whether the trial court properly revoked her probation.

Facts

In 2004, Smitson pled guilty to fifteen counts of Class D felony theft and fifteen counts of Class C felony forgery. The trial court sentenced Smitson to seven years, with one year executed and six years suspended. Smitson was also ordered to serve six years on probation.

Eventually, Smitson was employed as the office manager for the City of Richmond Street Department. From April 2009 until June 2009, Smitson used the City's charge accounts to make approximately \$4800 in purchases of plants and gardening tools for her own use.

On August 27, 2009, the State alleged that Smitson violated her probation by committing eleven counts of Class D felony theft and one count of Class D felony official misconduct. Following a hearing, the trial court revoked Smitson's probation. Smitson now appeals.

Analysis

As an initial matter, we note that the State did not file an appellee's brief. "The obligation of controverting arguments presented by the appellant properly remains with

the State.” Mateyko v. State, 901 N.E.2d 554, 557 (Ind. Ct. App. 2009), trans. denied. When the appellee does not submit a brief, the appellant may prevail by making a prima facie case of error—an error at first sight or appearance. Id. “We are nevertheless obligated to correctly apply the law to the facts of the record to determine if reversal is required.” Id.

Smitson argues that the trial court improperly admitted receipts from Lowes, Menards, and other stores, showing that she made purchases against the City’s accounts. Smitson contends that these receipts were inadmissible hearsay, which denied her the right to confront witnesses. In addressing this claim, we are mindful that probation is not a right; instead, it is a matter of grace, which is a conditional liberty that is a favor. Id. at 558. A probation revocation hearing is in the nature of a civil proceeding, and the alleged violation need be proven only by a preponderance of the evidence. Id. “We consider only the evidence most favorable to the judgment, and we will neither reweigh the evidence nor judge the credibility of the witnesses.” Id.

“The United States Supreme Court has held that the Due Process Clause applies to probation revocation hearings.” Reyes v. State, 868 N.E.2d 438, 440 (Ind. 2007). The trial court has discretion whether to grant probation, under what conditions, and whether to revoke it if conditions are violated. Id. “It should not surprise, then, that probationers do not receive the same constitutional rights that defendants receive at trial.” Id. A trial court may admit evidence during a probation revocation hearing that would not be permitted in a full-blown criminal trial. Id. To be admissible in a probation revocation

hearing, evidence must pass the substantial trustworthiness test, which requires the trial court to evaluate the reliability of the hearsay evidence. Id. at 442.

At issue here is the admission of several receipts, which were admitted after Smitson's supervisor testified that Smitson submitted the receipts as invoices to him. Smitson's supervisor initially signed the invoices and passed them on to the City Controller's office. The City Controller's office became concerned with the expenditures because the City grows its own flowers and does not need to purchase them. The matter was discussed with Smitson, who denied any wrongdoing, and then turned over to the Richmond Police Department. Detective Dave Carter of the Richmond Police Department reviewed the receipts to determine the date and the time of the transactions and then reviewed security footage from Lowes and Menards. The footage showed Smitson making purchases consistent with the receipts. Detective Carter obtained a search warrant for Smitson's parents' house, where Smitson lived. During the search, several items with the same "sku" as the items purchased by Smitson were recovered from Smitson's house. Tr. p. 55. Several photographs of the purchased items found at Smitson's house were admitted into evidence. Some of the items found at Smitson's house were also identifiable on the security footage as items Smitson purchased.

Under these facts, the receipts are sufficiently reliable so as to satisfy the substantial trustworthiness test. The trial court did not abuse its discretion in admitting the receipts into evidence.

Smitson also claims there is insufficient evidence to support the revocation of her probation. A person who knowingly or intentionally exerts unauthorized control over the

property of another with the intent to deprive the person of its value commits Class D felony theft. Ind. Code § 35-43-4-2(a). The State clearly established by a preponderance of the evidence that Smitson committed at least one act of theft. “The violation of a single condition of probation is sufficient to revoke probation.” Wilkerson v. State, 918 N.E.2d 458, 461 (Ind. Ct. App. 2009). There was sufficient evidence to support the revocation of Smitson’s probation.

Conclusion

Smitson has not established prima facie error regarding the admission of the receipts at her probation revocation hearing or the sufficiency of the evidence. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.