

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Timon R. Swift,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 29, 2022

Court of Appeals Case No.
22A-CR-1602

Appeal from the
Allen Superior Court

The Honorable
Frances C. Gull, Judge

The Honorable
Samuel R. Keirns,
Magistrate

Trial Court Case No.
02D05-1712-F3-71

Darden, Senior Judge.

Statement of the Case

- [1] Timon R. Swift appeals from the trial court’s order revoking his placement in the Allen Superior ReEntry Court¹ Program and his placement in probation after finding that Swift had violated the terms and conditions of both, arguing (1) that there is insufficient evidence to support the trial court’s finding and (2) that the trial court abused its discretion by ordering that Swift serve the balance of his sentence in the Department of Correction. Finding that the evidence is sufficient and that the trial court did not abuse its discretion when imposing its sanction, we affirm.

Facts and Procedural History

- [2] In February 2018 Swift pleaded guilty to one count of Level 3 felony burglary² and two counts of Level 6 felony battery.³ In March 2018, the trial court

¹ ReEntry Court is a program to assist “those that are coming from prison, re-entering into society.” Tr. Vol. I, p. 5.

² Ind. Code § 35-43-2-1(2) (2014).

³ Ind. Code § 35-42-2-1.3 (2016).

sentenced Swift to an aggregate term of ten years, with four years executed, six years suspended, and four years on probation. Upon completion of the executed portion of his sentence, in July 2021, Swift began participating in both the ReEntry Court Program and probation. Participation in both required Swift's agreement to certain terms. Among the terms that Swift agreed to were (1) to successfully complete all programs ordered by the reentry court judge, (2) not to use illegal drugs, and (3) not to have contact with the victims in his case. *See Exhibit Vol. 1, pp. 3-59, 61, 66; State's Exhibits 1-3, 5, 9.*

[3] On May 16, 2022, the State filed a petition to revoke Swift's placement in the ReEntry Court Program, alleging that Swift (1) failed to enroll and attend a program at the Center for Nonviolence; (2) "failed to be confined to the inside of the approved residence at all times while under electronic monitoring supervision" by going to Kastle Krew and Chase Bank without permission; (3) failed to maintain good behavior by contacting his victim and violating a no contact order; (4) failed a drug screen; and (5) failed to pay his fees. Appellant's App. Vol. II, p. 116. The next day, the State filed a petition to revoke Swift's probation, alleging the same violations.

[4] The trial court held an evidentiary hearing on the petitions. Swift's ReEntry Court case manager and his probation officer each testified as to his violations of the terms and conditions of those programs. The trial court found that Swift had violated the terms and conditions of his participation in each program.

[5] In reaching its conclusion, the trial court found that (1) Swift had failed to complete the program at the Center for Nonviolence, (2) went to two locations without permission, (3) had contact with his victim, (4) tested positive for marijuana, and (5) failed to pay his fees when he had the ability to pay, but chose not to do so. The trial court further stated that it was not going to overlook the threat Swift made to his victim when he told her “leave [me] alone before I kill you [for real],” noting that his underlying conviction was for two separate incidents of domestic battery, and that when Swift indicated “to the victim that [he] will kill her, [the court was] going to err on the side of caution and believe” him. Tr. Vol. 1, p. 61. The trial court concluded that it had “nowhere else for [Swift] to go” and revoked his participation in both programs, ordering him to serve the balance of his sentence in the Department of Correction. *Id.* at 64-65. Swift now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[6] Swift says that “the State’s evidence failed to demonstrate by a preponderance of the evidence that [he] violated every allegation.” Amended Appellant’s Br. p. 15. In response, the State asserted that “Swift admitted to numerous violations during the evidentiary hearing,” thus the evidence is sufficient to support the court’s revocation order. Appellee’s Br. p. 9. We agree with the State.

- [7] “Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction and both are made at the sole discretion of the trial court.” *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). “A defendant is not entitled to serve a sentence in either probation or a community corrections program.” *Id.* “Rather, placement in either is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Id.*
- [8] The “standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation.” *Cox*, 706 N.E.2d at 551. “A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence.” *Id.* “We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *Id.* If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation.” *Id.* “Proof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation.” *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005).
- [9] Turning to the evidence before the trial court, Bethany Hughes, Swift’s ReEntry Court case manager testified that Swift was ordered to participate in a specific program at the Center for Nonviolence, but failed to do so. He signed up, but failed to attend the intake meeting, and failed to reschedule the meeting for the program and attend it. Swift was expelled from the program for nonattendance. *See Exhibit Vol. 1, p. 60 (notice of expulsion).* During cross-examination, Swift

testified, “I admit that I didn’t complete it,” and offered excuses for his failure to re-schedule his intake appointment. Tr. Vol. 1, p. 42. However, this was an issue of credibility and we find the evidence is sufficient to support the trial court’s finding of a violation as to both placements. *See Bussberg*, 827 N.E.2d at 44.

[10] Next, on July 12, 2021, Swift had signed a document entitled “Allen County Community Corrections No Contact Addendum.” Ex. Vol. 1, p. 61 (State’s Exhibit 5). That document provided that he was not to have any contact with his victims. *Id.* Hughes testified about screenshots of text message exchanges between Swift and one of the victims and identified the exhibit. State’s Exhibit 6 shows Swift’s text message to the victim, saying “Leave [me] alone before I kill you [for real].” *Id.* at 62. When asked on cross-examination if he had contact with the victim, Swift said, “I had contact with the victim” then offered that “she’s the one that was contacting me.” Tr. Vol. 1, p. 44. Further, he was asked if he had “been informed that the burden [was on him] not to have contact,” and replied “Yes.” *Id.* This evidence is also sufficient to support the trial court’s finding of a violation as to both placements.

[11] Further, Hughes testified that on May 13, 2022, Swift went to pick up his paycheck and went to the bank to cash it without having received prior authorization to do so. Hughes stated that Swift “previously had a pass in that he had submitted, but it was denied due to [a] conflict with his schedule. He was advised to re-fill out his schedule to correct the schedule overlapping and he failed to do so, and then went and picked up and cashed his check.” *Id.* at

11. The conditions of Swift's placement in the ReEntry Court program provided that Swift "cannot be outside of or remain outside of [his] approved residence or travel to any location not authorized *without documented/written permission* from ACCC and/or the Court." Ex. Vol. 1, p. 5 (emphasis added). On appeal, Swift contends that he "believed that his trip was authorized so long as he submitted a new pass as his case manager had advised," and testified that he had "put in a pass for both places." Amended Appellant's Br. p. 13; Tr. Vol. 1, p. 38. When asked on cross-examination if Hughes had lied while testifying, Swift answered, "Yes." Tr. Vol. 1, p. 43. Swift said that to receive authorization for a pass "you fill it out and you turn it in and they approve it or they don't." *Id.* at 38. However, when asked whether the pass had been approved, Swift replied, "I mean, I asked her and I turned it in." *Id.* at 38. Swift did not provide evidence that he had received documented written permission to leave the residence on the alleged occasion. This is sufficient evidence to support the trial court's finding of a violation as to both placements.

[12] Additionally, Hughes testified that Swift had "multiple missed drug screens as well as multiple positives for marijuana." *Id.* at 23. Hughes identified State's Exhibit 7, which was a lab report reflecting the presence of marijuana in Swift's April 25, 2022 drug screen. During cross-examination, Swift stated that, "I did test positive, but I did not test positive more than twice." *Id.* at 44. He denied testing positive for marijuana five times, but admitted or knew "for a fact that [he] tested positive twice." *Id.* In explanation he said, "I was clean for four and a half years while I was in prison for the whole time that I was behind bars."

Id. This is sufficient evidence to support the trial court’s finding of a violation as to both placements.

[13] As a final matter, Hughes testified that despite Swift having “6,000.00 roughly on him” at one point, he did not make a payment at that time. *Id.* at 25. She testified further that Swift “owed \$1789 for fees and \$313 for drug screens” but that he did not begin paying regularly as required. *Id.* at 24. The next week, Hughes “advised [him] to make a payment that day,” and he paid \$100. *Id.* at 25. She further testified that “I spoke with him again, about making a more substantial payment, and then he made a \$1,000.00 payment.” *Id.* Hughes stated that “he did maintain employment, but had a poor attitude towards the program as a whole.” *Id.* at 26. On cross-examination, Swift testified only that he “made a \$1,000.00 payment last time I *was told to pay* at Residential.” *Id.* at 42 (emphasis added).

[14] Ashley Bretes, Swift’s probation officer, also testified at the hearing. She identified State’s Exhibit 9 which is Swift’s probation order, and she stated that Swift’s participation in the ReEntry Court program was a condition of his probation. Bretes testified that, “each of those violations are also a violation of his probation status.” *Id.* at 33. She further testified that “since ReEntry was a condition of his probation then, yes, that would be- those would be violations would be part of his probation.” *Id.* She identified State’s Exhibit 9 which is Swift’s probation order. The evidence is sufficient to support the trial court’s finding that Swift had violated the terms and conditions of both placements.

II. Revocation Sanction

- [15] Swift claims that even if we find that he violated the terms and conditions of his probation, “any alleged violation does not warrant the revocation of probation.” Amended Appellant’s Br. p. 19. We disagree.
- [16] Indiana Code section 35-38-2-3(h) (2015) sets out the options available to the trial court after it finds a person has violated a condition of probation during the probationary period. Those options include (1) continuing the person on probation with or without modifying or enlarging the conditions; (2) extending the person’s probation period for no more than a year beyond the original probationary period; or (3) ordering the execution of all or part of the sentence that was suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(h).
- [17] Here, Swift admitted that he did not complete the program at the Center for Nonviolence; that he left his placement without written authorization to pick up his paycheck and cash his check on the date alleged; that he had contact with the victim without permission and in violation of the no contact order; that he tested positive for marijuana at least twice; and, that he still owed fees. Hughes testified to the terms and conditions of his placement in the ReEntry Court program, and Bretes testified that violations of the terms and conditions of that placement would also constitute a violation of the terms and conditions of Swift’s probation.

[18] Swift argued at the hearing for the first time that he “suffers from serious mental health conditions,” but, as the trial court observed, Swift received a referral for mental health assistance, and a representative from that facility was present in court every week, but the court was unable to force and/or make Swift seek assistance. Tr. Vol. 1, p. 63. When Swift was evaluated for the ReEntry Court program, mental health assistance was not an identified need. Further, “consideration of a probationer’s mental health is only required where: (1) the State alleges the probationer has violated probation by committing a new crime and (2) the probationer’s mental health issues affect the probationer’s degree of culpability with regard to that new crime.” *Gaddis v. State*, 177 N.E.3d 1227, 1229 (Ind. Ct. App. 2021). Such was not the case here. Additionally, Swift has not established a nexus between his mental health and his behavior or an inability to receive appropriate treatment for his mental health issues while incarcerated.

[19] Though Swift points us to this Court’s reasoning in *Ripps v. State*, 968 N.E.2d 323 (Ind. Ct. App. 2012), that decision is distinguishable and unhelpful to him here. The *Ripps* appeal involved a defendant who suffered from terminal cancer not a mental health issue, and as a sex offender could not live near a public library, but lived just feet shy of the required distance away. That defendant was making efforts to remedy the alleged violations where there was some ambiguity about his violations. As Swift admitted many if not all of his violations, there is no ambiguity here. Consequently, we find that the trial court did not abuse its discretion by imposing the sanction that it did.

Conclusion

[20] In light of the foregoing, we affirm the trial court's judgment.

[21] Affirmed.

Crone, J., and Pyle, J., concur.