

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Macey Ann Cunningham,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 30, 2022

Court of Appeals Case No.  
22A-CR-1412

Appeal from the Vigo Superior  
Court

The Honorable John T. Roach,  
Judge

Trial Court Cause Nos.  
84D01-2101-F6-97, 84D01-2101-  
F6-221, 84D01-2105-F5-1713

**Altice, Judge.**

## Case Summary

- [1] The trial court revoked Macey Cunningham’s probation and ordered her to serve seven years of her previously suspended sentence in the Indiana Department of Correction (DOC). On appeal, Cunningham contends, and the State agrees, that the trial court erred by not awarding her credit for the time she spent in a work release facility awaiting disposition.
- [2] We remand.

## Facts & Procedural History

- [3] On February 9, 2022, Cunningham entered guilty pleas in the three underlying causes. In sum, she pleaded guilty under 84D01-2101-F6-0097 (F6-97) to Level 6 felony auto theft and Level 6 felony possession of methamphetamine, under 84D01-2101-F6-0221 (F6-221) to Level 6 felony unlawful possession of a syringe, and under 84D01-2105-F5-1713 (F5-1713) to Level 5 felony escape. The trial court imposed an aggregate sentence of ten years in the DOC – less 468 days credit – all suspended to formal probation. In addition to the standard terms of probation, the trial court ordered Cunningham to, among other things, successfully complete sober living at Club Soda.
- [4] After being released from jail to Club Soda that same day, Cunningham absconded a few hours later. This resulted in the filing of a notice of probation violation on February 16, 2022, and the issuance of a bench warrant, which was served on or about February 23.

[5] At the conclusion of the probation hearing on March 16, 2022, the trial court found that Cunningham had violated the terms of her probation and then took the disposition under advisement. The trial court ordered Cunningham to be transported to Vigo County Community Corrections Work Release-Dual Diagnosis while it considered her sentence. The court indicated that, in the meantime, it would have community corrections evaluate her for direct placement. The trial court scheduled sentencing two months out to allow time for various evaluations and for Cunningham to establish a period of compliance on work release.

[6] About a month later, on or about April 12, Cunningham cut off her GPS bracelet and absconded. The next day, the State filed a petition to revoke her placement in the work release program.<sup>1</sup> A bench warrant was issued, and Cunningham was arrested on or about April 18.

[7] At the sentencing hearing on May 18, 2022, Cunningham requested placement at the DOC to “sit and do my time and get out.” *Transcript* at 33. The trial court ordered her to serve a total of seven years in the DOC, revoking the entire two-year sentences under F6-97 and F6-221 and half of the six-year sentence under F5-1713. The balance of the sentence under F5-1713 remained suspended to probation. The court recommended Purposeful Incarceration. The trial court calculated Cunningham’s total credit time – accrued time and

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<sup>1</sup> The State also charged Cunningham with Level 5 felony escape under 84D01-2204-F5-1302, which was later dismissed upon the State’s motion.

good time credit – to be 586 days. This calculation, which is set out in detail in the court’s order, did not include the time Cunningham served on work release pending disposition on the probation violation from March 22 to April 12.

## **Discussion & Decision**

[8] It is undisputed that Cunningham served time on community corrections work release from March 22 to April 12 and that the trial court failed to award any credit time for this period. This was erroneous. Community corrections provides an alternative to imprisonment in the DOC, and “a defendant placed directly in a local community corrections program as an alternative to [DOC] commitment is entitled to earn both accrued time and good time credit for the time served in the program.” *Shepard v. State*, 84 N.E.3d 1171, 1173 (Ind. 2017) (citing Ind. Code § 35-38-2.6-6(c)). On remand, we direct the trial court to award additional credit time of 44 days toward Cunningham’s sentence.

[9] Remanded.

Brown, J. and Tavitas, J., concur.