

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Lisa D. Manning
Plainfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Marcus J. Johnson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2023
Court of Appeals Case No.
23A-CR-1548

Appeal from the
Hamilton Superior Court

The Honorable
Michael A. Casati, Judge

Trial Court Cause No.
29D01-1909-F5-8178

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Marcus J. Johnson (“Johnson”) appeals from the trial court’s order revoking his direct placement on community corrections and the balance of his previously suspended sentence. Johnson presents the following restated issue for our review: whether the trial court abused its discretion when it revoked his probation after he violated the conditions of community corrections. We affirm.

Facts and Procedural History

[2] On November 29, 2022, Johnson and the State executed a plea agreement whereby Johnson would plead guilty to Level 5 felony possession of a narcotic drug¹ and receive a fixed sentence of four years and six months, with six months executed in the Indiana Department of Correction (“DOC”), two years executed as a direct placement in community corrections, and two years suspended to probation. Pursuant to the plea agreement, Johnson’s probation was contingent upon Johnson “successfully complet[ing] any community corrections placement imposed” on him. Appellant’s App. Vol. 2 p. 71. The trial court accepted the plea agreement and imposed the agreed sentence in January 2023.

[3] Subsequently, Johnson was approved for community corrections placement at Hamilton County Community Corrections (“the program”) and for residential work release supervision through the program. Pursuant to the program’s

¹ Ind. Code § 35-48-4-6(b)(2).

Residential Program Contract (“the program Contract”) that Johnson acknowledged and signed, Johnson agreed to comply with the following pertinent conditions:

11. I agree to allow the [program] personnel to make inquiry into my activities. I agree to waive my right against search and seizure and permit [the program] or any law enforcement officer acting on behalf of [the program] to search my person, motor vehicle, or any location where my personal property may be found to ensure compliance with my conditions of the [program]. I understand that neither reasonable suspicion nor probable cause are necessary for such search to be conducted and I hereby waive any and all rights I may otherwise have relative to the search of my person or property in order to enable Community Corrections personnel to conduct routine and/or random searches of my person and property in order to ensure my compliance with all of the conditions related to my participation in the [] [p]rogram.

12. A. I will not consume or possess, on my person or in my vehicle, any alcohol or controlled substance (illegal drug) unless I can prove that I have a valid prescription issued by a licensed physician

. . . .

16. I agree to allow [the program] personnel to monitor my employment by examining my timecards, contacting my supervisor, and conducting worksite visits. I shall authorize my employer to release all records and information requested concerning my hours of employment, attendance on the job, duties of employment, reporting and dismissal times, and such other information as may be requested by [the program].

....

21. I understand that I am not to leave my place of employment or any other approved location without prior approval of [the program].

....

27. I understand that [the program] can terminate my participation in this program without notice if I have any violations of the above conditions.

....

During my term in the [] [p]rogram, if a determination is made that there is probable cause to believe that I have violated any of these conditions, I may be removed from participation in this program and may be incarcerated pending further Court determination. I further acknowledge that if the Court finds that I have violated any one of these conditions, the Court may, after a hearing, revoke the suspended sentence and impose any sentence it may have originally imposed, modify my conditions, or continue my placement.

This contract has been read and explained to me, and my signature below acknowledges that I have fully read and fully understand all terms and conditions of this contract. I further acknowledge that I have initialed each and every term of this [] [p]rogram contract as I have read and understood each term. I further acknowledge that I have read and understood the [] [p]rogram [h]andbook and agree to comply with all the rules and procedures set forth in it.

Id. at 108–11. While participating in the program, Johnson was prescribed Buprenorphine Naloxone Sublingual,² with the medication to be kept in the program’s medical center per the program’s storage procedure for controlled substances.

[4] From April 12 to April 30 of 2023, Johnson “accumulated 21 hours and 23 minutes of unaccounted-for time” while on work release, which led to his first notice of non-compliance with the program. *Id.* at 144. On May 1, 2023, Johnson was found in possession of nicotine pouches. He was also found with Suboxone strips in violation of the program’s storage procedure for controlled substances. Johnson’s possession of these items led to his second notice of non-compliance. The State filed both notices of non-compliance with the court, and subsequently, Johnson was terminated from the program. On May 10, 2023, the trial court ordered the clerk to issue an arrest warrant for Johnson.

[5] On July 6, 2023, a fact-finding hearing was held. The Director of the program (“the Director”) testified that on five different days in April 2023, Johnson was scheduled to work at certain times, but on each of those days, there was no verification of Johnson’s whereabouts or activities during the day for time increments ranging between thirty-three minutes to nine hours and fifty-two minutes. *See* Tr. Vol. 2 pp. 12–13. The Director also testified that a search of

² This controlled substance is commonly referred to as “Suboxone strips.”

Johnson's dorm produced Suboxone strips and nicotine pouches which was in violation of the program's storage procedure for controlled substances.

[6] Johnson also testified at the hearing. Johnson admitted that he had "unaccounted for time" between "April 12[] and April 30[of 2023.]" *Id.* at 22. Johnson also testified that he was supposed to take the Suboxone strip while he was at work, but he instead chose to not "take it and [] h[o]ld onto it" even though he knew that it was protocol for the program participants to not possess any controlled substances. *Id.* at 24–25. The trial court found that Johnson violated the conditions of his probation and revoked his placement on community corrections and the two years of his suspended sentence, ordering him to serve a total of four years in the DOC. Johnson now appeals.

Discussion and Decision

[7] Johnson claims that the trial court abused its discretion by "revoking Johnson's probation based solely on his community corrections violations." Appellant's Br. p. 9. "Probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* If a trial court determines that a person has violated a term or condition of probation within the probationary period, the court may impose one or more of the following sanctions:

(1) Continue the person on probation, with or without modifying or enlarging the conditions.

(2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h).

[8] We review a trial court’s selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[9] Johnson concedes that successful completion of community corrections was one of the terms of his probation. *See* Appellant’s Br. p. 11. Yet, Johnson argues that although his community corrections violations “warranted a revocation of his community corrections placement,” his violations did not warrant revocation of his term of probation. We disagree.³

[10] The plea agreement—which Johnson read and signed—specifically stated that Johnson’s placement on probation was contingent upon Johnson “successfully

³ To the extent Johnson suggests that the sanction imposed was inappropriate under Appellate Rule 7(B), our Supreme Court has held that the imposition of a probation violation sanction is not a criminal sentence as contemplated by Rule 7(B); in these circumstances, we review only for abuse of discretion. *See Prewitt*, 878 N.E.2d at 187–88 (Ind. 2007); *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008).

complet[ing] any community corrections placement imposed” on him. Appellant’s App. Vol. 2 pp. 71–72. Johnson’s successful completion of his community corrections placement was contingent upon Johnson “comply[ing] with the special rules stated in [the program Contract]” that he acknowledged and signed. *Id.* at 108. Johnson failed to comply with the special rules pertaining to work release and the program’s storage procedure for controlled substances. From April 12 to April 30 of 2023, Johnson accumulated “21 hours and 23 minutes of unaccounted for time” while on work release which led to his first notice of non-compliance with the program. Tr. Vol. 2 p. 13; *see also* Appellant’s App. Vol 2 p. 144. On May 1, 2023, Johnson’s dorm was searched, and Johnson was found in possession of Suboxone strips and nicotine pouches which was expressly prohibited in the program Contract that Johnson acknowledged and signed. Subsequently, Johnson received his second notice of non-compliance and was later terminated from the program. During the fact-finding hearing, the Director testified that Johnson violated the conditions set forth in the program Contract that Johnson acknowledged and signed. Johnson also testified that he violated the conditions of the program. During his testimony, Johnson admitted that he had “unaccounted for time” between “April 12[] and April 30[of 2023.]” Tr. Vol. 2 p. 22. Johnson also testified that he was supposed to take the Suboxone strip while he was at work, but he instead chose to not “take it and [] h[o]ld onto it” even though he knew that it was protocol for the program participants to not possess any controlled substances. *Id.* at 24–25.

[11] Again, it is within the discretion of the trial court to determine probation conditions and to revoke probation if the probation conditions are violated. Here, the trial court acted within its discretion by revoking Johnson's probation because Johnson violated the conditions of his community corrections placement, resulting in Johnson's unsuccessful termination of his community corrections placement and his consequential failure to comply with a contingent term of his probation.

[12] Johnson also argues that the trial court abused its discretion when it ordered him to serve his previously suspended sentence because his "community corrections violations were not heinous in nature" and that the violations were supported by mitigating circumstances. Appellant's Br. p. 11. As we noted above, Johnson violated a contingent term of his probation, and thus per statute, the trial court had discretion to order execution of the two years of his suspended sentence. In ordering execution of the suspended sentence, the trial court considered Johnson's community corrections violations for the instant offense in addition to Johnson's prior criminal history which consisted of thirteen juvenile arrests, two misdemeanor convictions, and four felony convictions. *See* Tr. Vol. 31; *see also* Appellant's App. Vol. 2 pp. 83–87. Furthermore, this was not the first time Johnson's community corrections had been terminated unsuccessfully nor the first time that his probation had been revoked. The presentence investigation report reveals that Johnson: "has served three executed sentences . . . one of which was revoked to [the DOC] . . . [and Johnson] has been placed on probation . . . twice, both were revoked to

[the DOC].” Appellant’s App. Vol 2 p. 88. The trial court properly recognized that Johnson’s criminal history, prior community corrections violations, and prior probation revocations demonstrated that he was a poor candidate for community placement. The trial court’s decision to revoke his probation is not clearly against the logic and effect of the facts and circumstances. The trial court did not abuse its discretion when it revoked Johnson’s probation and ordered him to serve the two years of his suspended sentence of probation.

[13] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it revoked Johnson’s probation after he violated the terms of his community corrections placement.

[14] Affirmed.

Pyle, J., and Tavitas, J., concur.