

# 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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Thomas Charles Hayden,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 8, 2022

Court of Appeals Case No.  
22A-CR-1569

Appeal from the Madison Circuit  
Court

The Honorable David A. Happe,  
Judge

Trial Court Cause No.  
48C04-2101-F4-67

**Brown, Judge.**

[1] Thomas Charles Hayden appeals the trial court’s order revoking his community corrections placement. We affirm.

### *Facts and Procedural History*

[2] On January 11, 2021, the State charged Hayden with: Count I, burglary as a level 4 felony; Count II, theft of a firearm as a level 6 felony; and Count III, theft as a class A misdemeanor. Hayden and the State entered into a plea agreement pursuant to which Hayden would plead guilty to burglary and theft and the State would dismiss Count II. On March 16, 2021, the court held a hearing, took the plea agreement under advisement, scheduled a sentencing hearing for May 4, 2021, and released Hayden to work release pending sentencing.

[3] On March 26, 2021, Rose Shirley, the Adult Day Reporting Program Assistant at the Community Justice Center, filed a Notice of Work Release Termination alleging that Hayden accumulated over seven hours of “unaccountable time/unknown whereabouts,” was under the influence, lied to an officer, failed to produce a urine drug screen, and failed to pay fees.<sup>1</sup> Appellant’s Appendix Volume II at 58.

[4] On May 4, 2021, the court held a hearing and found Hayden guilty pursuant to the plea agreement. It sentenced Hayden to concurrent sentences of five years

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<sup>1</sup> The chronological case summary states: “Violation of Pre-trial Work Release will be addressed at 5/4/21 sentencing hearing.” Appellant’s Appendix Volume II at 7. The record does not contain a transcript of the May 4, 2021 hearing.

for burglary and one year for theft. The court suspended two years and ordered three years executed. The court ordered that the sentence be served in the Continuum of Sanctions Program through the Community Justice Center.

[5] In June 2021, Shirley filed a Notice of Continuum of Sanctions Termination, which was twice amended and alleged that the Community Justice Center was seeking termination of the Continuum of Sanctions Program due to certain violations including that Hayden: (a) accumulated approximately 300.5 hours of unaccounted time/unknown whereabouts between May 5, 2021, and June 2, 2021; (b) provided a positive urine drug screen for methamphetamine on June 2, 2021; (c) failed to turn in work verifications; (d) failed to return to the facility at 12:30 pm on June 9, 2021, as scheduled; (e) committed a new criminal offense of failure to return to lawful detention as a level 6 felony; (f) failed to pay program fees; (g) committed a new criminal offense of providing false information on or about June 9, 2021; and (h) committed a new criminal offense of residential entry on or about June 9, 2021.

[6] On July 8, 2021, Probation Officer Patrice Dixon filed a Notice of Violation of Suspended Sentence. In an amended notice filed on July 28, 2021, Officer Dixon alleged Hayden: (a) committed the new criminal offenses of burglary as a level 4 felony and false informing as a class A misdemeanor under cause number 48C04-2106-F4-1668; (b) failed to successfully complete the executed portion of his sentence as indicated in the Second Amended Notice of Continuum of Sanctions Termination; and (c) committed the new criminal

offense of failure to return to lawful detention under cause number 48C04-2107-F6-1941.

[7] On May 10, 2022, the court held a hearing, Hayden denied the allegations, and the court scheduled an evidentiary hearing. On June 7, 2022, the court held a hearing at which Shirley testified that she supervised Hayden between May 5 and June 9, 2021, he had certain work release conditions, and he signed a program contract and received a handbook. She testified that Hayden accumulated 300.5 hours of unaccounted time, had a positive drug screen for methamphetamine, failed to turn in work verifications, failed to return to the work release facility, “obtained [a] new criminal offense of Failure to Return to Lawful Detention,” failed to pay his fees, and “obtained two other charges [of] . . . False Informing and Residential Entry.” Transcript Volume II at 15-16. With respect to the unaccounted time, she testified that Hayden said he could obtain verifications for the periods between May 5, 2021, and June 6, 2021, she allowed him time to obtain them, he was due to return at 12:30 p.m. on June 9th, and “that’s when he failed to return.” *Id.* at 18. She also testified that he never provided her any information as to where he was between May 5th and June 6th.

[8] Anderson Police Officer Zachary Taylor testified that he received a call from dispatch regarding a report of a suspicious male in someone’s garage on June 18, 2021, he located the subject who matched the description given by dispatch, and the subject refused to give his name. Officer Taylor asserted that he “trespassed him from that” address and told him not to return. *Id.* at 24.

Officer Taylor indicated he later spoke with the victim, Marshall Whitaker, and learned that the suspect was in Whitaker's house. He stated that he located the suspect again, the suspect gave a false name, and he later identified the suspect as Hayden. He testified that Whitaker identified Hayden as the person who was in his house and had never seen Hayden before that time.

[9] After the State rested, Hayden testified that he worked during the 300.5 hours of unaccounted time and he had paperwork but it was lost. He stated that he did not use methamphetamine. He testified that he did not return by 12:30 p.m. on June 9th because he was arrested. He also stated that he was not in Whitaker's house.

[10] The court found violations “[i]n the amended violation of suspended sentence . . . under 3A, B, and C” and “[u]nder the second amended notice of COS termination violations found on 2A, C, D, E, F, G and H.” *Id.* at 32-33. The court stated:

In the existing cause number that we're talking about at the moment, . . . it has not been successful in any level. Mr. Hayden has . . . not followed the rules of work release, not complied with his administrative requirements whatsoever. He's committed new criminal offenses. Um, serious involving, . . . an entry into . . . a resident to [sic] another person. Um, this is not a person a good risk for community corrections at this point and he is completely (indiscernible) of his obligation of this case, so I believe the State's position of a full revocation of is [sic] appropriate here and that's what I'm going to order. . . . I'm not going to order Purposeful Incarceration at this point. If he does well for a year or so down there, a year or so actual, then maybe he could request a modification at that point. I might take a look

at it but I'm not going to build in the concept of Purposeful Incarceration because Mr. Hayden has not shown any indication that he would . . . benefit[] by that program at this point.

*Id.* at 36.

[11] In a June 7, 2022 order, the court found “violation as alleged in the amended notice of suspended sentence under 3A, 3B and 3C,” “violation as alleged in the 2<sup>nd</sup> amended notice of COS termination under 2A and 2C through 2H,” and “[n]o finding of violation under 2B.” Appellant’s Appendix Volume II at 15. The court revoked Hayden’s placement and suspended sentence and sentenced him to 1,673 days in the Department of Correction (“DOC”).

### *Discussion*

[12] Hayden argues that the alleged violations of (a), the accumulation of 300.5 hours of unaccounted time/unknown whereabouts, and (c), the failure to turn in work verifications, were based on the same omission, “not verifying employment.” Appellant’s Brief at 9. He asserts that violations (d), the failure to return to the facility as scheduled, and (e), committing the new criminal offense of failure to return to lawful detention, were also based on the same act. He mentions double jeopardy and asserts that “[f]undamental fairness should require that the state not be allowed to get findings of multiple violations based on the same facts.” *Id.* at 10. He also asserts the court abused its discretion by revoking his placement and ordering that he serve the remainder of his sentence.

[13] For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh'g denied*. Both probation and community corrections programs serve as alternatives to commitment to the DOC and both are at the sole discretion of the trial court. *Id.* Placement on probation or in a community corrections program is a matter of grace and not a right. *Id.*; see *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015) (“The similarities between the two programs have led to common treatment in appellate review of a trial court’s decision to revoke either . . .”). Our 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. The State need only prove the alleged violations by a preponderance of the evidence, 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, and if there is substantial evidence of probative value to support the 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 a defendant’s probation is sufficient to support a trial court’s decision to revoke probation.” *Hubbard v. State*, 683 N.E.2d 618, 622 (Ind. Ct. App. 1997).

[14] The Indiana Supreme Court has held that a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The Court explained that,

“[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that, “[i]f this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants.” *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[15] To the extent Hayden mentions double jeopardy, we note that this Court has previously held that generally a violation of a condition of probation or community corrections does not constitute an offense within the purview of double jeopardy analysis. *See McQueen v. State*, 862 N.E.2d 1237, 1243-1244 (Ind. Ct. App. 2007) (holding that “[r]evocation proceedings are based upon violations of probation conditions rather than upon the commission of a crime, and the finding of whether a defendant has complied with these conditions is a question of fact and not an adjudication of guilt” and that a violation of a condition of community corrections does not constitute an offense within the purview of double jeopardy analysis); *Childers v. State*, 656 N.E.2d 514, 516 (Ind. Ct. App. 1995) (“The law is well settled that a violation of a condition of probation does not constitute an offense for purposes of double jeopardy.”), *trans. denied*. Further, the trial court found multiple violations which Hayden does not challenge as violating double jeopardy.

[16] The record reveals that the court initially granted Hayden community corrections in May 2021 and ordered the sentence to be served in the



Continuum of Sanctions Program through the Community Justice Center. Hayden violated his placement that same month as well as the next month. The court found multiple violations including the accumulation of 300.5 hours of unaccounted time, failing to return to lawful detention, and committing false informing and burglary. We cannot say that the trial court abused its discretion in revoking Hayden's placement or in revoking his suspended sentence.

[17] For the foregoing reasons, we affirm the trial court's order.

[18] Affirmed.

Altice, J., and Tavitas, J., concur.