MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amy Louise Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 21, 2022

Court of Appeals Case No. 21A-CR-1693

Appeal from the Cass Superior Court

The Honorable Thomas C. Perrone, Senior Judge

Trial Court Cause No. 09D02-1601-F4-1

Tavitas, Judge.

Case Summary

[1] Following the revocation of her community corrections placement, Amy Louise Davis appeals the trial court's imposition of the balance of her previously-suspended sentence. Finding no abuse of discretion, we affirm.

Issue

[2] Davis raises one issue on appeal, which we restate as whether the trial court abused its discretion in imposing the remainder of her previously-suspended sentence.

Facts

[3] The facts most favorable to the judgment follow: on January 15, 2016, the State charged Davis with burglary, a Level 4 felony; residential entry, a Level 6 felony; and theft, a Class A misdemeanor. On August 22, 2016, Davis pleaded guilty to burglary, a Level 4 felony.[1] As prescribed by the approved plea agreement, the trial court sentenced Davis to nine years in the Department of Correction ("DOC"), with five years executed, and four years suspended to probation. The plea agreement also provided that: (1) if "approved and qualified[,]" Davis could serve three years of her five-year executed sentence through Cass/Pulaski Community Corrections ("CPCC"); and (2) "[f]ines, costs and other statutory or court-imposed terms including any probation terms,

[1] In exchange for Davis' guilty plea, the State agreed to dismiss the remaining charges.

fees, and/or interdiction fees [would] be imposed by the Court." Conf. App. Vol. II p. 45.

[4] That day, the trial court also entered "Conditions of Probation (Special Terms)", which provided in part: (1) "[y]ou shall obey ALL of the general and indicated special terms and conditions of your supervised probation[,]" *id*. at 70; and (2) "[y]ou shall not consume, possess or purchase alcoholic beverages or visit any place where alcoholic beverages are served by the drink." *Id*. at 70.

[5] In October 2017, Davis began to serve the executed portion of her sentence on home detention through community corrections. On January 29, 2018, CPCC filed a notice of violation; Davis subsequently admitted that she violated the conditions of community corrections. On June 25, 2018, the trial court revoked Davis' four years of probation and three years of community corrections and imposed seven years (or 2,555 days) of Davis' previously-suspended sentence. *Id*. at 134.

[6] Additionally, the trial court noted its willingness to modify Davis' sentence "to Community Transition and Community Corrections" upon her successful completion of the "Purposeful Incarceration" program. *Id*. The trial court's order entered on December 13, 2019, provided in part as follows:

> *That as a term of acceptance into the community transition and community corrections programs [Davis] will be required to comply with the program's rules and regulations*. Additionally, [Davis] will undergo a risk/needs assessment and is ordered to successfully complete appropriate programming. If the department determines that probable cause of a violation of the program

> exists then [Davis] will be temporally [sic] removed from the program and transported to the Cass County Jail. [Davis] will remain incarcerated in the Cass County Jail until which time a hearing can be held for judgment or relief appropriate in the premises.

Id. at 135 (emphasis added). Davis subsequently completed the "Purposeful Incarceration" program and requested a sentence modification. On January 6, 2020, the trial court modified Davis' sentence to allow the balance of her sentence to be served on home detention through community corrections.

[7] While on home detention through community corrections, in approximately June 2020, Davis used buprenorphine, fentanyl and/or morphine, and methamphetamine and, as a result, was jailed. On June 5, 2020, CPCC filed a second notice of violation regarding Davis' drug use. On July 20, 2020, Davis admitted the allegation was true. The trial court noted Davis' forty-five actual days of time already served, declined to impose further sanctions, and released Davis to continue serving her sentence through community corrections. The court's "community corrections violation order" provided in part as follows: "[a]ll other previously ordered terms and conditions remain in effect until final adjudication . . . ." *Id*. at 146.

[8] On May 19, 2021, during a home visit at Davis' residence, CPCC Officer Mellonee Mayhill perceived a suspected alcoholic odor emanating from Davis' person. Officer Mayhill left Davis' residence and returned hours later, by which time Davis was on a neighbor's patio. Davis stumbled as she walked toward Officer Mayhill, who "could tell that [Davis] had been drinking quite a bit."

Tr. Vol. II p. 11. Davis smelled "really strong[ly]" of alcohol, and her speech was slurred. *Id*. According to Officer Mayhill, Davis admitted that she: (1) was drunk; (2) was under the influence of alcohol during Officer Mayhill's earlier visit; and (3) could not recall how much alcohol she had consumed. Officer Mayhill also observed a half-empty bottle of rum outside Davis' apartment. On May 21, 2021, CPCC filed a third notice of community corrections violation regarding Davis' consumption of alcohol and unpaid user fees totaling $5,420.00.

[9] The trial court conducted a fact finding hearing regarding the alleged violations on July 6, 2021. Notably, the State did not introduce CPCC's conditions of community corrections into evidence. The State did introduce the terms and conditions applicable to Davis' probation, revoked in June 2018, which included an alcohol prohibition.

[10] During the hearing, Officer Mayhill recounted the foregoing facts, including the indicators of intoxication that Officer Mayhill observed during the May 19, 2021 incident. Then, Davis testified as follows regarding the incident: (1) Officer Mayhill accused her of drinking, which Davis denied; (2) Davis asked Officer Mayhill to administer a breathalyzer or urine screen, which Officer Mayhill refused to do; (3) the bottle of rum belonged to Davis' neighbor, Gordon Peak[2]; (4) after Davis was arrested for the violation, she did not request

[2] Peak corroborated Davis' claim in his own testimony at the fact finding hearing. *See* Tr. Vol. II pp. 21-23.

a pass to a testing facility; and (5) due to financial hardships, including a vital surgery, Davis negotiated a fees abatement agreement with CPCC Director Dave Wegner[3] with which she was compliant until her arrest for the May 19, 2021 incident. Davis, at no point during the fact finding hearing, contended that she was allowed to drink alcohol during her community corrections term.

[11] At the close of the evidence, the trial court found both alleged violations were true, revoked Davis' community corrections placement, and reinstated her remaining 1,020-day sentence. The trial court also entered a money judgment in the amount of $5,464.00 against Davis. Davis now appeals.

Analysis

[12] Davis argues that the State failed to present sufficient evidence to prove that she violated the terms of her community corrections placement.[4] "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." *Flowers v. State*, 101 N.E.3d 242, 247 (Ind. Ct. App. 2018) (quoting *Withers v. State*, 15 N.E.3d 660, 663-64 (Ind. Ct. App. 2014)).

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[3] Additionally, during the hearing, CPCC Director Wegner testified that: (1) Davis was behind throughout her supervision; (2) Davis owed outstanding fees that predated the current placement; and (3) CPCC agreed to stop assessing new fees while Davis was on FMLA leave from her job, but that "whatever her past fees were owed, were still owed . . . ." Tr. Vol. II p. 24.

[4] Davis also argues that "the failure to pay fines and fees required as a condition of community corrections should not be the sole basis for commitment to the department of corrections." Davis' Br. p. 11. We do not reach this secondary claim for reasons discussed herein.

[13] "'Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.'" *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (quoting *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 the conditions are violated." *Id.* "In appeals from trial court probation violation determinations and sanctions, we review for abuse of discretion." *Id.* "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances," *id.*, "or when the trial court misinterprets the law." *Id.* (citing *State v. Cozart*, 897 N.E.2d 478, 483 (Ind. 2008)). "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 the witnesses." *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010) (quoting *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009)).

[14] Revocation of a community corrections placement is a two-step process, in which the trial court first makes a factual determination as to whether the defendant violated the terms of his or her placement or probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Because such a proceeding is civil in nature, the State need only prove the alleged violation by a preponderance of the evidence. *Holmes*, 923 N.E.2d at 485. If a violation is found, the court then determines whether the violation warrants revocation. *Woods*, 892 N.E.2d at 640. Proof of a single violation is sufficient to permit a revocation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied.* As with probationers, those who are placed in community corrections are subject to the

conditions of that placement; if they violate those terms and conditions, the community corrections director may change the terms, continue the placement, reassign the person, or ask the trial court to revoke the person's placement. Ind. Code § 35-38-2.6-5(a).

A. Adequacy of the Trial Record

[15] Davis argues that: (1) "the State failed to prove that there was an actual community correction[s] rule against Davis consuming alcohol"; (2) "[t]here are no community corrections rules in the record"; and:

> [(3)] . . .[T]he [trial] court's [sentence] modification order did not articulate any rules against drinking. Instead, the order stated generally that Davis would be required to follow the rules of community corrections, but failed to outline what those rules were. There was no proof in the record that the community corrections rules forbid drinking alcohol, and Davis was not on probation at the time of her alleged alcohol consumption. Without proof of the existence of a rule against alcohol consumption, the record was insufficient to establish a violation of community corrections.

Davis' Br. p. 13.

[16] Here, the State does not deny that: (1) the trial record did not include the conditions of community corrections; and (2) the State did not ask the trial court to take judicial notice of the same. Rather, the State argues that:

> Davis was aware of the terms and conditions of her participation in community corrections. Each time that the court released Davis from incarceration following prior violations, it ordered her to continue her original sentence in community corrections,

> and the original terms and conditions that Davis agreed to abide by were still applicable. One of those terms was that Davis [should] not consume alcohol. Davis consumed alcohol in violation of the rules.

State's Br. p. 9. We agree.

[17] Davis does not contend that she lacked notice of the rules to which she was subject. Davis has long[5] been on notice that the State intended that she be subject to a prohibition on alcohol possession and/or consumption under the conditions of either her probation or in her community corrections placement, if any.[6]

[18] The record is clear that the trial court intended Davis to be subject to the generalized community corrections rules. When the trial court granted Davis' request for a sentence modification to allow her to serve the balance of her sentence on home detention through community corrections, the trial court's January 2020 sentence modification order provided: "as a term of acceptance into the community transaction and community corrections programs [Davis]

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[5] The record reveals that, at the time of Davis' August 2016 sentencing pursuant to the parties' plea agreement, the trial court contemporaneously entered "Conditions of Probation (Special Terms)" that explicitly provided, in part, as follows: "[y]ou shall not consume, possess or purchase alcoholic beverages or visit any place where alcoholic beverages are served by the drink." Conf. App. Vol. II p. 70. Admittedly, Davis' probation was subsequently revoked; however, the trial court's sentencing remark remains relevant.

[6] Moreover, Davis did not testify, at the fact finding hearing, that she was unaware of the general conditions of her home detention. To the extent that Davis, who was familiar with the criminal justice system and who was represented by counsel at the various stages in which her sentence was entered and/or modified, was unclear as to the specific conditions of her placement, the record does not reflect that she launched any such inquiry.

will be required to comply with the program's rules and regulations." Conf. App. Vol. II p. 135 (emphasis added). When Davis subsequently admitted that she violated a condition of her community corrections placement in July 2020, the trial court allowed Davis to remain in the placement, and the court's order of July 2020 explicitly provided: "*All other previously ordered terms and conditions remain in effect until final adjudication* . . . ." *Id*. at 146 (emphasis added).

[19] Here, we find that the "omission" of the conditions of home detention from the trial record is of little moment.[7] Davis was given notice of the specific violations alleged. In its notice of violation of community corrections, filed on May 21, 2021, the State averred, in part, the following:

> 7. That based on the Indiana Risk Needs Assessment (IRAS)[,] Community Corrections has [Davis] identified as a moderate risk to reoffend. [Davis] was assigned into the Department's GPS Home Detention Program.
>
> 8. *That during said term Community Corrections is reporting that* [*Davis*] *did violate terms and conditions of Community Corrections in that*:
>
> Count II: *That on or about May 19, 2021, [Davis] possessed and/or consumed alcoholic beverages, said violation being in direct contradiction to terms and conditions of Home Detention*.

[7] Admittedly, the better practice would have been to include the CPCC Conditions of Home Detention in the trial record; however, the omission was not fatal under the circumstances of this case.

> . . .
>
> WHEREFORE, the petitioner, requests that the Court find that probable cause of a violation of Community Corrections exists and order the Defendant to be brought before the Court for a hearing upon this petition and for judgment or relief appropriate in the premises. . . .

Conf. App. Vol. II pp. 148-49 (emphasis added). Additionally, during the hearing, Officer Mayhill's testimony centered around her investigation of a perceived alcohol violation—the inference being that Davis was prohibited from possession and/or consumption of alcohol.

[20] Here, we find that the State's "omission" of CPCC's conditions of home detention from the trial court record did not render the State's evidence insufficient to support the trial court's judgment. The question before the trial court was whether the State proved, by a preponderance of the evidence, that Davis violated the home detention rules by consuming alcohol. As discussed below, we find that the State carried its burden.

B. Judicial Notice

[21] We have already found, *supra*, that the State was not required to introduce CPCC's conditions of home detention into the trial record to satisfy its burden of proof. Even had such a requirement existed, as the State rightly contends, a Court has the ability to take judicial notice of CPCC's conditions of home

detention, which are readily available as public record.[8] Our Supreme Court has previously held that, "because probation revocation (and community corrections placement revocation) procedures are to be flexible, strict rules of evidence do not apply therein." *Cox v. State*, 706 N.E.2d 547, 550 (Ind. 1999) (citing *Isaac v. State*, 605 N.E.2d 144, 148-49 (Ind. 1992)); *see* Ind. Evidence Rule 101(c). "This is necessary to permit the court to exercise its inherent power to enforce obedience to its lawful orders." *Cox*, 706 N.E.2d at 550.

[22] Indiana Evidence Rule 201 provides, in part, as follows:

> (a) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice:
>
> (1) a fact that:
>
> > (A) is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction, or
> >
> > (B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned . . . .
>
> (2) the existence of:

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[8] From Cass County's official local government page, CPCC's linked sub-page may be accessed at https://www.casspulaskicommunitycorrections.com/. CPCC's "Conditions of Home Detention" can be found at https://34bfe7c1-3789-43ee-9bc6-69ef1b5e0b2d.filesusr.com/ugd/c31cfc_7e9eb2cf14924848a9583800b8d3eebd.pdf.

. . .

(C) records of a court of this state.

* * * * *

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

[23] At no time has Davis indicated that she was unaware of the CPCC Conditions of Home Detention, which would have been a poor defense. It is undisputed here that Davis was on home detention through CPCC and, thereby, subject to the program's general rules and conditions at the time of the violation at issue.[9] As noted, CPCC's general "Conditions of Home Detention" are readily accessible online on the Cass County local government website (https://www.co.cass.in.us) via CPCC's linked sub-page. Common sense dictates that CPCC's "Conditions of Home Detention[,]" which are published and readily accessible via a local government website: (1) are "not subject to reasonable dispute because [they are] generally known within the trial court's

[9] When the trial court granted Davis' request for a sentence modification in January 2020 to allow Davis to serve the balance of her sentence on home detention through community corrections, the court's order provided: "as a term of acceptance into the community transaction and community corrections programs [Davis] *will be required to comply with the program's rules and regulations*." Conf. App. Vol. II p. 135 (emphasis added). Davis subsequently violated a condition of her community corrections placement, and in allowing Davis to remain in the placement, the trial court ordered: "[*a*]*ll other previously ordered terms and conditions remain in effect until final adjudication* . . . ." *Id*. at 146 (emphasis added).

territorial jurisdiction"; and (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Evid. R. 201(a).

[24] Viewing this community corrections revocation through a flexible procedural framework, and in the interest of "permit[ting] the [trial] court to exercise its inherent power to enforce obedience to its lawful orders," *Cox*, 706 N.E.2d at 550, we see no issue with our taking judicial notice of CPCC's conditions of home detention pursuant to Evidence Rule 201. *See*, *e.g.*, *Williams v. Indiana Dep't of Correction*, 142 N.E.3d 986, 992 n.2 (Ind. Ct. App. 2020) (rejecting medical providers' arguments on appeal "that [this Court] cannot take judicial notice of the Mayo Clinic's website of general facts relating to diseases, their symptoms, and their common medications. *See* Ind. Evidence Rule 201(a)(1)(B)").

C. Sufficiency of the Evidence

[25] Lastly, we turn to reviewing the sufficiency of the evidence to prove, by a preponderance of the evidence, that Davis violated CPCC's "Conditions of Home Detention," which provide, in pertinent part, as follows:

CONDITIONS OF HOME DETENTION

> As a result of your charge of xxxxx you have been sentenced to serve xxxxx days with Community Corrections you will obey the following conditions during your term on Home Detention:
>
> * * * * *

TREATMENT/ALCOHOL-DRUGS/FIREARMS

* * * * *

> 23. *You agree not to possess, have in your control or consume alcoholic beverages*, C.B.D. products, illegal substances or use substances for the primary purpose of intoxication i.e. over the counter medication, synthetic marijuana, gasoline, bath salt. *You will not be allowed to be with, be in the presence of, or associate with any person who is possessing, using supplying, or dealing in* illegal drugs or *alcohol*. *No Nyquil, mouthwash, cough syrup, C.B.D. products, or medicine containing alcohol will be allowed*, unless prescribed by a physician. You further agree that any results used to test for the consumption of alcohol or illegal drugs will be admissible in a court of law. . . .
>
> 24. You agree to submit to random urine testing for alcoholic beverages or illegal drugs at the request of the Community Corrections staff. . . .

(Emphasis added). Applying the foregoing "Conditions of Home Detention" to the instant matter, we find that the generalized rules of the CPCC community corrections program, which Davis was court-honored to comply, prohibited Davis from possessing or consuming alcohol during her community corrections placement.

[26] At the fact finding hearing, the State presented the following evidence to prove the alleged violation: Officer Mayhill testified that she visited Davis' residence twice on May 19, 2021. During Officer Mayhill's initial visit, she believed she smelled an odor of alcohol emanating from Davis' person. On Officer

Mayhill's second visit, she saw a half-empty bottle of rum outside Davis' apartment and observed various indicators of Davis' intoxication, including a stumbling gait and slurred speech. Officer Mayhill also testified that Davis smelled "really strong[ly]" of alcohol, and Officer Mayhill "could tell that [Davis] had been drinking quite a bit[.]" Tr Vol. II p. 11. Further still, Officer Mayhill testified that Davis not only admitted that Davis had been drinking, but Davis also: (1) admitted to drinking during Officer Mayhill's previous home visit; and (2) acknowledged that she drank alcohol to such excess that she could not quantify how much she consumed. Based upon the foregoing evidence, including Officer Mayhill's testimony regarding her observations of Davis' intoxication; and CPCC Director Wegner's testimony regarding Davis' unpaid program fees, we find that sufficient evidence supported the trial court's determination that the State proved, by a preponderance of the evidence, that Davis violated the terms of her community corrections placement.

[27] Inasmuch as a single violation is sufficient to permit the revocation of a community corrections placement, we conclude that the trial court did not abuse its discretion in revoking Davis' community corrections placement and ordering her to serve the balance of her previously-suspended sentence in the DOC. *See Cox*, 706 N.E.2d at 551 ("[i]f 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 . . . ."). Moreover, to the extent that Davis offered an alternate explanation for the presence of the bottle of rum, her claim is unavailing. It was the province of the

trial court to resolve the conflicts between Davis' (and Peak's) testimony and that of Officer Mayhill. Our standard of review precludes us from reweighing the evidence or reassessing the credibility of witnesses. Davis' claims fail.

Conclusion

[28] The trial court did not err in ordering Davis to serve the balance of her previously-suspended sentence in the DOC. We affirm.

[29] Affirmed.

Bradford, C.J., and Crone, J., concur.