

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Carl Wayne Holland,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 15, 2023

Court of Appeals Case No.
23A-CR-756

Appeal from the Vanderburgh
Circuit Court

The Honorable David D. Kiely,
Judge

Trial Court Cause No.
82C01-2112-F5-6820

Memorandum Decision by Judge Crone
Judges Pyle and Tavitas concur.

Crone, Judge.

Case Summary

- [1] Carl Wayne Holland appeals the trial court's revocation of his placement in work release. He claims that the State presented insufficient evidence to support the revocation. In the event we allow the revocation to stand, he alternatively argues that he is entitled to additional credit time toward his reinstated sentence. Finding sufficient evidence to support the revocation, but that remand is appropriate for the trial court to award Holland additional credit time to which he is entitled, we affirm and remand.

Facts and Procedural History

- [2] In December 2021, Holland was charged with level 5 felony battery, level 6 felony obstruction of justice, level 6 felony resisting law enforcement, class A misdemeanor criminal trespass, and class B misdemeanor possession of marijuana. The State also alleged that Holland was a habitual offender. Holland subsequently pled guilty to level 5 felony battery and admitted to being a habitual offender. The trial court sentenced him to an aggregate term of three years, with the first year served in the Department of Correction (the DOC) and the remaining two years to be served in the Vanderburgh County Therapeutic Work Release Program.
- [3] Holland was released from the DOC to work release on November 28, 2022. On November 30, the State filed a petition to revoke Holland's placement in work release alleging that Holland consumed an illegal drug or controlled substance. Holland admitted to violating the conditions of his placement, and

he was placed back in work release. On January 23, 2023, the State filed a second revocation petition alleging that Holland was arrested and charged with class A misdemeanor possession of a controlled substance. An evidentiary hearing was held on February 21, 2023. The trial court took the matter under advisement and subsequently found by a preponderance of the evidence that Holland violated the conditions of work release by committing a new crime. Accordingly, the trial court revoked his placement and ordered him to serve the remainder of his two-year sentence in the DOC. During sentencing on March 7, 2023, the trial court stated to Holland, “[Y]ou’ll be given credit for all the time spent incarcerated” Tr. Vol. 2 at 31. The abstract of judgment indicates that Holland was given 328 days of credit time for the time spent incarcerated and/or in work release from February 28, 2022, to January 21, 2023. This appeal ensued.

Discussion and Decision

Section 1 – Sufficient evidence supports the revocation of Holland’s placement.

[4] Holland challenges the trial court’s revocation of his placement in community corrections. We have observed that both probation and community corrections programs serve as alternatives to commitment to the DOC, and both are made at the sole discretion of the trial court. *Treece v. State*, 10 N.E.3d 52, 56 (Ind. Ct. App. 2014), *trans. denied*. Indeed, a defendant is not entitled to serve his sentence in either probation or a community corrections program; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a

right. *Id.* Our standard of review following a trial court’s decision to revoke placement in community corrections is well settled:

The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. That is, a revocation of community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of community corrections, we will affirm its decision to revoke placement.

McQueen v. State, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007) (citations omitted).

[5] Holland contends that the State failed to present sufficient evidence to establish that he actually committed class A misdemeanor possession of a controlled substance, so his placement could not be revoked on the basis that he committed a new crime. However, as noted above, the State need only prove an alleged violation by a preponderance of the evidence. Here, Holland’s work release case manager testified that Holland violated the rules of work release by committing a “violation of the law” when, on January 21, 2023, Holland was arrested and charged with misdemeanor possession of a controlled substance. Tr. Vol. 2 at 19.

[6] In addition to the case manager’s testimony, the State introduced a certified copy of the revocation charging information and requested that the trial court take judicial notice of the misdemeanor case. The trial court granted the request and stated that it would take judicial notice of the “filings in that cause number.” *Id.* at 16. The trial court took the matter under advisement and presumably reviewed the relevant filings in the misdemeanor case before making a final ruling on the revocation. Those filings included the probable cause affidavit, which alleged that a work release officer found Holland in possession of what the officer believed based upon his experience to be marijuana.¹ The evidence before the trial court was sufficient to support a finding by a preponderance of the evidence that Holland violated the terms of his work release placement by committing a new crime. We affirm the trial court’s revocation of Holland’s placement in the work release program.²

¹ Holland relies on Indiana Evidence Rule 201(a)(2)(c) to argue that the trial court was only permitted to take judicial notice of the “existence” of the records but not the “facts” contained within the records. Reply Br. at 6. However, it is well established that due to the flexibility of probation revocation procedures, strict rules of evidence do not apply. *Cox v. State*, 706 N.E.2d 547, 550 (Ind.1999). Moreover, during probation revocation hearings, “judges may consider any relevant evidence bearing some substantial indicia of reliability.” *Id.* at 551 (citation omitted). Holland does not suggest that the probable cause affidavit in the misdemeanor case was unreliable.

² In revoking Holland’s placement, the trial court noted that, in addition to the current violation, Holland admitted to violating the conditions of his placement just a month prior and had been permitted to return to work release but on a “zero tolerance” basis. Tr. Vol. 2 at 30.

Section 2 – Holland is entitled to credit time for the time he spent incarcerated awaiting disposition in the revocation proceeding.

[7] Holland points out that, although he received 328 days of credit time toward his reinstated sentence for the period he spent incarcerated and/or in work release from February 28, 2022, to January 21, 2023, it is clear from the abstract of judgment that he was not given credit for the days he spent incarcerated in the Vanderburgh County Jail from January 22, 2023, until the revocation sentencing hearing on March 7, 2023. It is well established that a person imprisoned for a level 5 felony receives one day of accrued time for each day he is imprisoned awaiting trial or sentencing, and one day of good time credit for every three days of accrued time. Ind. Code § 35-50-6-3.1(c), -4(b). Because pre-sentence jail time credit is a matter of statutory right, trial courts “do not have discretion in awarding or denying such credit.” *James v. State*, 872 N.E.2d 669, 671 (Ind. Ct. App. 2007). Accordingly, we remand for the trial court to determine and award Holland the additional credit time to which he is entitled.³

³ Holland surmises that “[t]he trial court may have declined to award [him] credit from January 22, 2023 through the [revocation] dispositional hearing because it believed that credit was being applied to the [new] misdemeanor count, since Holland was arrested on the new offense on January 21, 2023.” Appellant’s Br. at 11. However, any credit should have been applied to his reinstated sentence, as the record indicates that Holland was ordered held without bond in the Vanderburgh County Jail on the revocation matter until disposition on the petition, and he was continuously confined until that disposition occurred on March 7, 2023. The misdemeanor case was subsequently dismissed. Thus, even assuming that he was being held in both causes simultaneously, he has yet to receive credit in any case for the time he spent incarcerated from January 22, 2023, to March 7, 2023.

[8] Affirmed and remanded.

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