

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lester Lee Riggins, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

June 28, 2023

Court of Appeals Case No.
22A-CR-329

Appeal from the Marion Superior
Court

The Honorable Shatrese M.
Flowers, Judge
The Honorable James K. Snyder,
Commissioner

Trial Court Cause No.
49G02-1703-F4-9691

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] Lester Lee Riggins, Jr. (“Riggins”) appeals following the revocation of both his community corrections placement and his probation. Riggins does not challenge the revocation of his community corrections, but instead, argues that the trial court abused its discretion when it revoked his probation because complying with his community corrections placement was not a term of his probation. Because we agree that compliance with community corrections was not a condition of Riggins’ probation, we reverse the trial court’s revocation of Riggins’ probation and remand with instructions to reinstate Riggins’ one day of probation.

[2] We reverse and remand.

Issue

Whether the trial court abused its discretion when it revoked Riggins’ probation.

Facts

[3] In March 2017, the State charged Riggins with Level 5 felony battery by means of a deadly weapon and Level 4 felony unlawful possession of a firearm by a serious violent felon. In September 2019, Riggins pleaded guilty to both offenses pursuant to a plea agreement. In exchange for Riggins’ guilty plea, the State agreed to a fixed sentence. The fixed sentence set forth in the plea agreement provided that Riggins would serve six (6) years for his Level 5 felony

battery by means of a deadly weapon conviction and eight (8) years for his Level 4 felony unlawful possession of a firearm by a serious violent felon conviction. The plea agreement also provided that the sentences would be served concurrently, with six (6) years executed on home detention, two (2) years suspended, and one (1) day on probation.

[4] Later that month, the trial court accepted the plea agreement and sentenced Riggins pursuant to its terms. Specifically, the trial court told Riggins that he would serve his six years executed through Marion County Community Corrections (“MCCC”) Home Detention with GPS monitoring, followed by his one day of probation during his suspended sentence. The trial court told Riggins that “the standard terms and conditions apply for that one day.” (Supp. Tr. at 21). The trial court did not list compliance with MCCC as a term of Riggins’ probation.

[5] One month later, MCCC filed a notice of community corrections violation. In its filing, MCCC alleged that Riggins had failed to charge his GPS monitoring device and had failed to answer his phone when MCCC attempted to telephone him. In November 2019, Riggins admitted these violations, and the trial court ordered Riggins to serve the remainder of his executed sentence through work release at the Duvall Residential Center (“Duvall”).

[6] In December 2019, Riggins left Duvall on an approved pass but never returned. Instead, Riggins fled to Kentucky. As a result, MCCC filed another community corrections violation, wherein MCCC alleged that Riggins had left Duvall and

had not returned. Subsequently, the trial court issued a warrant for Riggins' arrest.

[7] In September 2020, police officers in Kentucky arrested Riggins on the Indiana warrant. In August 2021, police officers from Indiana transported Riggins back to Indiana. Soon after, the probation department filed a notice of probation violation. In its filing, the probation department stated that Riggins had violated his probation by failing to follow the terms of his MCCC placement.

[8] At his January 2022 community corrections and probation revocation hearing, the trial court heard the facts as set forth above. At the conclusion of the hearing, the trial court found that Riggins had violated both his community corrections placement and his probation. The trial court revoked Riggins' community corrections and probation and ordered him to serve the remainder of his sentence at the Indiana Department of Correction ("the DOC").

[9] Riggins now appeals.

Decision

[10] On appeal, Riggins does not dispute the revocation of his community corrections placement for leaving Duvall and absconding to Kentucky. Instead, his sole argument is that there was insufficient evidence that he had violated the terms of his probation because compliance with community corrections was not a term of his probation.

[11] Probation is not a right in which a criminal defendant is entitled, but a matter of grace left to a trial court's discretion. *McCauley v. State*, 22 N.E.3d 743, 746 (Ind. Ct. App. 2014), *trans. denied*. It is within the trial court's discretion to determine probation conditions and to revoke probation if the conditions are violated. *Id.* at 747. Accordingly, a trial court's probation decision is subject to review for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effects of the facts and circumstances before the court. *Id.*

[12] Our review of the record reveals that, at sentencing, the trial court did not, orally or in writing, list compliance with community corrections as a term of Riggins' probation. The State does not contest this point. Thus, we hold that the trial court abused its discretion when it revoked Riggins' probation for not complying with his community corrections placement because this term was not listed as a term of his probation. *See Lucas v. State*, 501 N.E.2d 480, 481 (Ind. Ct. App. 1986) (holding that probation terms that are not entered into the record at sentencing and furnished in writing to defendant at sentencing have no effect and cannot be used to revoke probation). *See also Atkins v. State*, 546 N.E.2d 863, 866 (Ind. Ct. App. 1989) (same). Accordingly, we reverse Riggins' probation revocation and remand with instructions for the trial court to reinstate Riggins' one day of probation.¹

¹ Riggins, in his reply brief, argues for the first time that the trial court ordered him to serve his suspended sentence based on his probation violation and to serve his executed sentence based on his community

[13] Reversed and remanded.

Bradford, J., and Kenworthy, J., concur.

corrections violation. In Riggins' appellate brief, he raised no challenge to the trial court's order directing him to serve his sentence. However, in his reply brief, he contends that the trial court's revocation of his one day of probation resulted in the order to serve his two-year suspended sentence, and he argues that if we reverse the trial court's order revoking his one day of probation, then we should also reverse the trial court's order directing him to serve his two-year suspended sentence. However, Riggins cannot raise an issue for the first time in a reply brief, and the issue is waived. *French v. State*, 778 N.E.2d 816, 825-26 (Ind. 2002).

We note that the trial court had the authority under INDIANA CODE § 35-38-2.6-5 to revoke the entirety of Riggins' sentence for violating community corrections. INDIANA CODE § 35-38-2.6-5 provides that if a defendant violates the term of his placement, the community corrections director may "request that the court revoke the placement and commit the person to the county jail or the [DOC] for the remainder of the person's sentence." I.C. § 35-38-2.6-5(a)(4). MCCC recommended revocation, and the trial court accepted that recommendation and ordered Riggins to serve his entire sentence.