

## 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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### ATTORNEY FOR APPELLANT

Marietto V. Massillamany  
Fishers, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Jodi K. Stein  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Jeffrey Lynn Edwards, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 26, 2022

Court of Appeals Case No.  
21A-CR-1929

Appeal from the Hamilton Circuit  
Court

The Honorable Paul Felix, Judge

Trial Court Cause No.  
29C01-1907-F4-5728

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Jeffrey Lynn Edwards (Edwards), appeals the trial court's revocation of his placement in community corrections and the imposition of his previously suspended sentence.

[2] We affirm.

## ISSUE

[3] Edwards presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by revoking his placement in community corrections and imposing his previously suspended sentence following his positive urine screen for fentanyl and his commission of driving while suspended.

## FACTS AND PROCEDURAL HISTORY

[4] On July 15, 2019, the State filed an Information, charging Edwards with Level 4 felony possession of methamphetamine, Level 6 felony possession of methamphetamine, Level 6 felony possession of a narcotic drug, Class A misdemeanor possession of marijuana, and three Counts of Class B misdemeanor public intoxication. On May 14, 2020, Edwards pled guilty to Level 4 felony possession of methamphetamine in exchange for the State's agreement to dismiss the remaining charges. During the sentencing hearing on June 18, 2020, the trial court imposed the fixed sentence agreed upon in the plea agreement, *i.e.*, six years, with two years executed on direct commitment

to community corrections and four years suspended, with three of those years on probation.

[5] On October 1, 2020, within four months of his sentencing, Edwards received his first notice of non-compliance with the community corrections placement which alleged that he had a total of 27 hours and 14 minutes of unaccounted-for time over 22 days. That same day, he received a second notice of non-compliance, alleging that he had tested positive for alcohol use. Based on these two notices, the State filed a violation of probation petition on October 5, 2020. On December 3, 2020, the trial court found that Edwards had violated the conditions of his community corrections placement and probation. The court modified Edwards' sentence and ordered him to serve executed time in the county jail from December 3 to December 15, 2020, and then return to community corrections placement and probation. Edwards signed a new community corrections contract on December 16, 2020.

[6] On April 20, 2021, Edwards received a notice of non-compliance with community corrections, alleging that he had been arrested for driving while suspended and possession of cocaine. The next day, on April 21, 2021, another notice of non-compliance with community corrections was filed, alleging that he had tested positive for fentanyl and norfentanyl. Again, based on these two notices, the State filed a violation of probation petition. On July 29, 2021, the trial court conducted an evidentiary hearing. During the hearing, Noblesville Police Department Officer Tyler Mensch (Officer Mensch) testified that, on April 19, 2021, he observed Edwards leave his employment and drive a vehicle,

registered to Edwards, on State Road 32 while Edwards' license was suspended. The Hamilton County Community Corrections supervision director testified to Edwards' positive screens for fentanyl and norfentanyl. At the conclusion of the evidence, the trial court found that the State had established both allegations by a preponderance of the evidence and revoked Edwards' community corrections placement, as well as his suspended sentence to probation, and ordered that he serve the remainder of his sentence in the Department of Correction (DOC).

[7] Edwards now appeals. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

[8] Edwards contends that the trial court abused its discretion by ordering him to serve the remaining balance of his previously suspended sentence at the DOC, maintaining that this "is rather harsh given the circumstances." (Appellant's Br. p. 6).

[9] We initially note that Edwards presents his argument as to the propriety of his sentence revocation under Indiana Appellate Rule 7(B). The review and revision of sentences pursuant to Indiana Appellate Rule 7(B) is not applicable to probation revocation proceedings. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (noting that whether a sentence is inappropriate in light of the nature of the offense and the character of the offender "is not the correct standard to apply when reviewing a sentence imposed for a probation violation.") Because a trial court's action in a post-sentence probation violation proceeding is not a

criminal sentence as contemplated by Indiana Appellate Rule 7(B), the review and revise remedy of Indiana Appellate Rule 7(B) is not available. *Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008).

[10] 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. *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). A defendant is not entitled to serve a sentence in either probation or a community corrections program. *Id.* Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right. *Id.* The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation, that is, revocation of a community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Id.*

[11] If a trial court finds that the defendant has violated a condition at any time before termination of the probation period, and the petition to revoke is filed within the probationary period, the trial court may impose one or more sanctions, including ordering execution of all or part of the sentence that was suspended at the time of the initial sentencing. Ind. Code § 35-38-2-3(h). Once a trial court has exercised its grace by ordering probation rather than incarceration, “the judge should have considerable leeway in deciding how to proceed.” *Brandenburg v. State*, 992 N.E.2d 951, 953 (Ind. Ct. App. 2013), *trans. denied*. If this discretion were not given to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order

probation. *Id.* Accordingly, a trial court's sentencing decision for a probation violation is reviewable using the abuse of discretion standard. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* It is well-settled that a single violation is sufficient to support revocation. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

[12] Edwards focuses his argument on his self-serving testimony that he was not the driver of the van but instead maintains that he was merely the passenger in the vehicle and therefore could not have committed the driving while suspended violation. During the evidentiary hearing on the community placement violations, Officer Mensch testified that he personally observed Edwards driving the van on State Road 32. As the trial court concluded that Edwards had violated his community corrections placement by driving while suspended, it found Officer Mensch's testimony credible and therefore Edwards' argument amounts to nothing more than an invitation to reweigh the evidence, which we are not permitted to do. *See Cox v. State*, 706 N.E.2d 547, 551 (Ind. Ct. App. 1999).

[13] In the case at hand, Edwards violated the conditions of his community corrections placement in September 2020, by being absent and consuming alcohol. After a hearing, the trial court modified Edwards' sentence and ordered him to serve executed time in the county jail from December 3 to December 15, 2020. Barely four months after being returned to his community corrections placement, Edwards committed the instant two violations in April 2021 by driving while suspended and consuming fentanyl. Accordingly, based

on Edwards violating the rules of his community corrections placement on four separate occasions within a one-year period of being sentenced, we cannot find that the trial court abused its discretion by ordering him to serve his previously suspended sentence. *See Johnson v. State*, 692 N.E.2d 485, 489 (Ind. Ct. App. 1998) (finding that after the trial court had already “graciously chosen not to revoke his probation on one prior occasion,” the trial court’s decision to order execution of his full sentence was not an abuse of discretion); *Terpstra v. State*, 138 N.E.3d 278, 289-90 (Ind. Ct. App. 2019) (affirming the trial court’s imposition of the entire previously suspended sentence because defendant’s commission of a new offense less than a year after being placed on probation was not a mere technical violation of the terms of probation).

## CONCLUSION

[14] Based on the foregoing, we hold that the trial court did not abuse its discretion by revoking Edwards’ placement in community corrections and imposing his previously suspended sentence.

[15] Affirmed.

[16] Robb, J. and Molter, J. concur