MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Danny K. Hight,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

August 14, 2024

Court of Appeals Case No.
24A-CR-39

Appeal from the Fountain Circuit Court

The Honorable Stephanie S. Campbell, Judge

Trial Court Cause No.
23C01-2207-F6-271

Memorandum Decision by Judge Bradford
Judges Crone and Tavitas concur.

Bradford, Judge.

Case Summary

[1] After Danny Hight admitted to violating numerous terms of his community-corrections placement, the trial court revoked 740 days of Hight's 910-day placement and ordered that he serve the revoked portion in the Department of Correction ("DOC"). Hight contends on appeal that the trial court abused its discretion in revoking his community-corrections placement, arguing that the trial court failed to appropriately weigh his proffered mitigating factors and that the trial court did not have authority to revoke his placement because he had not yet started serving his community-corrections placement in the underlying case. We affirm.

Facts and Procedural History

[2] On August 24, 2020, Hight was convicted of operating a vehicle while intoxicated endangering a person with a habitual vehicular substance enhancement in 23C01-1910-CM-387 ("Cause No. CM-387"). He was sentenced to 1825 days in the DOC, with "1093 days to be served as a direct commitment to community corrections and 730 days suspended to probation." Appellant's App. Vol. II p. 65.

[3] After a warrant was issued for his arrest due to an alleged community-corrections violation, on June 30, 2022, Hight was located at a welding shop in Kingman and placed under arrest. At the time of his arrest, Hight was found to be in possession of a glass pipe and a cut drinking straw. The pipe tested

positive for methamphetamine. Hight was subsequently charged with, and pled guilty to, possession of methamphetamine under Cause Number 23C01-2207-F6-271 ("Cause No. F6-271").

[4] Hight was sentenced to 910 days on work release. He also admitted to violating the terms of his probation in Cause No. CM-387, for which violation "364 days of [his] suspended portion was revoked" and he was returned to his community-corrections placement. Appellant's App. Vol. II p. 65. Pursuant to the terms of his plea agreement, Hight was also ordered to complete a minimum of 180 days of inpatient treatment at Truman House. Additionally, his sentence in Cause No. F6-271 was to be served consecutively to his sanction in Cause No. CM-387 and his 90-day sentence in Cause Number 23C01-2206-CM-251.[1]

[5] On March 21, 2023, Hight completed a substance-abuse assessment at Hamilton Center. Hight, however, concealed the fact that he had been ordered to complete inpatient treatment, falsely telling his therapist that he only needed to complete the assessment.

[6] On March 25, 2023, shortly before Hight was scheduled to return home at 3:00 p.m., community-corrections case managers Krystal Anthrop and Brock Mitchell arrived at Hight's home to administer a drug screen. Anthrop

[1] Hight had been charged with and had pled guilty to Class B misdemeanor possession of a device or substance used to interfere with a drug or alcohol screening test in Cause Number 23C01-2206-CM-251.

consulted GPS monitoring software, which showed that Hight had gone to a Dollar General in Montezuma and a gas station before returning home. Hight arrived home at 2:54 p.m., driving a motorcycle. When asked why he was driving a motorcycle despite not having a license, Hight indicated that he had had "no choice but to drive himself" after a coworker had "decided not to" go to work that morning. Appellant's App. Vol. II p. 70. Hight completed the drug screen, which tested positive for alcohol.

[7] While at Hight's home, Anthrop and Mitchell discussed a funeral with Hight, which Hight had been granted permission to attend from 11:00 a.m. to 3:00 p.m. on March 22, 2023. GPS records subsequently revealed that Hight had visited three different bars, for which he did not have authorization to visit, between 11:02–11:55 a.m., 3:07–4:31 p.m., 5:00–5:50 p.m., and 6:30–10:34 p.m. on the day of the funeral.

[8] On April 11, 2023, the State petitioned to revoke Hight's community-corrections placements in Cause Nos. CM-387 and F6-271, alleging that Hight had committed and had been charged with driving while suspended under Cause Number 83C01-2302-CM-29 ("Cause No. CM-29"), failed to engage in treatment, tested positive for alcohol, traveled to unapproved locations, and not paid all of the required fees. Hight subsequently admitted that he had committed the alleged violations. He argued, however, that the trial court did not have the authority to revoke his community-corrections placement in Cause No. F6-271 because he had not yet finished serving his prior sanction in Cause No. CM-387.

[9] On October 24, 2023, the trial court found that it had authority to revoke Hight's community-corrections placement in Cause F6-271 because Hight had been "subject to the terms of [his placement] immediately upon sentencing, even if not being actively supervised in the matter at the time of the violation." Appellant's App. Vol. II p. 104. The trial court revoked 740 days of Hight's 910-day community-corrections commitment in Cause No. F6-271, with the revoked portion of his sentence executed in the DOC, followed by "the remainder of the sentence as a direct commitment to community corrections as originally ordered." Appellant's App. Vol. II p. 104.

Discussion and Decision

[10] Hight contends that the trial court abused its discretion in revoking his community-corrections placement in Cause No. F6-271. For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community-corrections program[2] the same as we do a hearing on a petition to revoke probation. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). "The similarities between the two dictate this approach." *Id.* "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." *Id.* "A defendant is not entitled to serve a sentence in either probation or a

[2] A community-corrections program is "a program consisting of residential centers and work release, home detention, or electronic monitoring that is: (1) operated under a community[-]corrections plan of a county … or (2) operated by or under contract with a court or county." Ind. Code § 35-38-2.6-2.

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.* (quoting *Million v. State*, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995)).

[11] "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." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). "If 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.* "Accordingly, a trial court's sentencing decisions for probation violations are 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.*

I. Appropriateness of Sanction Imposed

[12] Hight argues on appeal that the trial court abused its discretion in revoking his community-corrections placement in Cause No. F6-271 and ordering him to serve 740 days in the DOC.

> Probation revocation is a two-step process. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008); *Treece v. State*, 10 N.E.3d 52, 56 (Ind. Ct. App. 2014) (setting forth the two-step process in addressing the revocation of placement in community corrections), *trans. denied*. First, the court must make a factual determination that a violation of a condition of probation actually occurred. *Woods*, 892 N.E.2d at 640. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.*

Johnson v. State, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016). When a probationer admits to the violations, the trial court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Woods*, 892 N.E.2d at 640. A trial court may revoke the defendant's placement upon proof of a single violation. *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*.

[13] "'However, even a probationer who admits the allegations against him must still be given an opportunity to offer mitigating evidence suggesting that the violation does not warrant revocation.'" *Johnson*, 62 N.E.3d at 1229 (quoting *Woods*, 892 N.E.2d at 640). In challenging the trial court's order, Hight asserts that the trial court abused its discretion by failing to give "proper weight to all of the mitigating factors which [he had] offered." Appellant's Br. p. 8. However, as Hight concedes, the trial court was not required to weigh or balance the proffered aggravating and mitigating factors when imposing a sanction in a community-corrections revocation proceeding. *See Treece*, 10 N.E.3d at 59. The trial court was merely required to give Hight the opportunity to present mitigating evidence and, as the State points out, "Hight has not made any claim that it did not do so." Appellee's Br. p. 11.

[14] Again, Hight admitted to violating the terms of his community-corrections placement by committing and being charged with driving while suspended under Cause No. CM-29, failing to engage in treatment, testing positive for alcohol, traveling to unapproved locations, and failing to pay all of the required fees. Given these violations, we cannot say that the trial court abused its

discretion in revoking Hight's community-corrections placement or ordering him to serve 740 days in the DOC.[3] *See Killebrew*, 165 N.E.3d at 582 (providing that a trial court may revoke the defendant's placement upon proof of a single violation).

II. Timeliness of Revocation

[15] Hight alternatively argues that the trial court abused its discretion in revoking his community-corrections placement in Cause No. F6-271 because he had yet to start serving that placement. We considered a similar question in *Johnson v. State*, 606 N.E.2d 881, 882 (Ind. Ct. App. 1993), in which the appellant argued that the trial court had "erred in revoking his probation prior to the commencement of the probationary period." Concluding otherwise, we noted that

> [t]he probation statute specifically states that the court may "[t]erminate the probation; at any time." Ind. Code § 35-38-2-1. As we have previously determined, the language "at any time" permits a trial court to terminate probation before a defendant has completed his sentence or to revoke probation before the defendant enters the probationary phases of his sentence. [*Ashba v. State,* 570 N.E.2d 937, 939 (Ind. Ct. App. 1991), *affirmed on trans.*, 580 N.E.2d 244 (Ind. 1991)].

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[3] Hight cites to the dissenting opinion in *Killebrew* in support of his claim that the trial court had "some duty" to consider whether he had been rehabilitated before revoking his community-corrections placement. Appellant's Br. p. 8. However, even if we assume that the dissenting opinion supports Hight's argument, it is not binding precedent. *See N.Y. Life Ins. Co. v. Bruner*, 129 Ind. App. 271, 275, 153 N.E.2d 616, 618 (Ind. Ct. App. 1958) (providing that because a dissenting opinion is not a majority view, it is not binding precedent).

Johnson, 606 N.E.2d at 882. We reached the same conclusion in *Million*, concluding that

> There is no express language in the community[-]corrections statute that limits the trial court's discretion to revoke placement only when a violation occurs during the period of placement. Thus, we construe the statute as permitting the trial court to revoke a defendant's placement in the community[-]corrections program before he enters the community[-]corrections phase of his sentence for that offense. *See Ashba*, 570 N.E.2d at 939; *cf.* [*Johnson*, 606 N.E.2d at 882] (violation of terms of placement in community[-]corrections program could serve as grounds to revoke probation before probationary phase of sentence). Such authority is inherent in the trial court's discretion both to order placement in a community[-]corrections program and then to revoke the placement upon a violation of its terms.

646 N.E.2d at 1002.

[16] While Hight acknowledges that our conclusion in *Million* is "controlling law," he argues that "it is unfair and inequitable to hold [him] to a revocation of the sentence prior to the sentence commencing." Appellant's Br. p. 8. In support, Hight cites to *Spivey v. State*, 553 N.E.2d 508 (Ind. Ct. App. 1990), but his reliance on *Spivey* is misplaced, as *Spivey* did not consider the question of whether a probation or community-corrections placement may be revoked prior to the start of the placement.[4] Further, to the extent that Hight suggested that

[4] *Spivey* considered whether the trial court had properly denied defendant's motion to dismiss a murder charge after he had admitted that his statements in his plea agreement, by the terms of which the State had agreed to dismiss the charge, were false, thus voiding his guilty plea. 553 N.E.2d at 509–10.

he has been denied due process, he has not developed the argument and has therefore waived it for appellate review. *See Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (providing that Lyles had waived his due-process argument by failing to develop the argument or support it with citations to authority), *trans. denied*. Consistent with our decisions in *Million* and *Johnson*, we conclude that the trial court did not abuse its discretion in revoking Hight's community-corrections placement in Cause No. F6-271 before he started his placement. *See Million*, 646 N.E.2d at 1002; *Johnson*, 606 N.E.2d at 882.

[17] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Ronald J. Severt, Jr.
Wallace Law Firm
Rockville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana