

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jennifer Lynn Martin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 3, 2023

Court of Appeals Case No.
22A-CR-2821

Appeal from the Vanderburgh
Superior Court

The Honorable David D. Kiely,
Judge

Trial Court Cause No.
82D03-2003-F6-1654

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Jennifer Martin appeals the Vanderburgh Superior Court’s revocation of her work release placement and sentence. Martin presents two issues for our review:

- I. Whether the trial court violated her right to due process when it revoked her work release placement.
- II. Whether the trial court abused its discretion when it sentenced her.

[2] We affirm.

Facts and Procedural History

[3] In March 2020, the State charged Martin with Level 6 felony forgery, Level 6 felony counterfeiting, and Level 6 felony attempted theft after she tried to cash a fictitious check. The State also alleged that Martin was a habitual offender. In May 2022, Martin pleaded guilty as charged, and she admitted that she was a habitual offender. The trial court accepted the guilty plea and sentenced Martin to four years, with two years to be served on home detention followed by two years suspended to probation.

[4] On June 8, the State filed a petition to revoke home detention after Martin failed a drug screen. In that petition, the State alleged that Martin had admitted that she used methamphetamine on June 3; she had “just [been] released from jail” in Kentucky “for pending charges”; and she had lost her job and could no longer afford electronic monitoring. Appellant’s App. Vol. 2, p. 49. During a hearing on that petition, Martin admitted that she violated the terms of her

home detention. The trial court ordered her to serve her four-year sentence on work-release.

[5] On October 20, the State filed a petition to revoke Martin’s placement on work-release alleging that she had violated the terms of that placement when she had “unaccountable time.” *Id.* at 57. During a hearing on that petition, the trial court ordered Martin to be held in jail pending the preparation of a presentence investigation report (“PSI”). Martin, who was represented by counsel, admitted that she had “unaccountable time.” Tr. p. 5. At the conclusion of the hearing, Martin asked the trial court whether there was “any possible way” to let her return to work release so that she could keep her two jobs. *Id.* The trial court responded, “Yeah, it’s a shame you put yourself in that position.” *Id.* The court then adjourned the hearing and scheduled sentencing for the following week.

[6] At sentencing, the State requested a “15-day sanction [and] return to the program tomorrow[.]” *Id.* at 9. Martin’s counsel advised the trial court that the PSI was accurate, and she joined the State’s sentencing recommendation. The trial court then stated as follows:

Alright. The Court after reviewing the criminal history of the defendant, noted that she has at least 13 prior felonies and those are all separate causes, and at least 14 prior misdemeanor cases, all separate cases. And I say at least, because Kentucky, getting dispositions is hard to do. Getting a disposition from them now. So, I didn’t count any of those. And I know that she’s been through the Forensic Diversion Program. I think she’s had enough chances. So, on her admission, the Court grants the petition. The Court sentences her to the Indiana Department of Corrections in Count 1, for a period of 2 years, to be executed at

the Indiana Department of Correction[[]]. She is a habitual offender and she pled to that. The Court is going to enhance that sentence for a period of 2 years, as was done by the prior Court. So, she's going to have a total sentence of 4 years at the Indiana Department of Corrections. She is to be given credit for all the time spent incarcerated. The Court's not going to impose a civil judgment. Alright. Good luck to you, ma'am.

Id. at 9-10. This appeal ensued.

Discussion and Decision

Issue One: Due Process

- [7] Martin first contends that the trial court violated her right to due process when it revoked her work release placement. In particular, Martin argues that the court

should have informed the parties that it was planning to impose a sanction 97 times longer than the State requested. It should also have asked Martin if she personally wished to be heard on why the court should [have] considered a lesser sanction. By failing to provide that opportunity, Martin's right to due process of law was violated.

Appellant's Reply Br. at 4. We do not agree.

- [8] The due process requirements of a probation revocation proceeding, and our standard of review, are well-established:

“When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the

witnesses. *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*. Probation is a favor granted by the State, not a right to which a criminal defendant is entitled. *Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997). However, once the State grants that favor, it cannot simply revoke the privilege at its discretion. *Id.* Probation revocation implicates a defendant's liberty interest, which entitles him to some procedural due process. *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Because probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding. *Id.*

The minimum requirements of due process include: (a) written notice of the claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation. *Id.* (citing *Morrissey*, 408 U.S. at 489).

Probation revocation is a two-step process. *Id.* First, the court must make a factual determination that a violation of a condition of probation actually has occurred. *Id.* If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* Indiana has codified the due process requirements at Ind. Code § 35-38-2-3 by requiring that an evidentiary hearing be held on the revocation and providing for confrontation and cross-examination of witnesses and representation by counsel. *Id.*; *see also* Ind. Code § 35-38-2-3(d), (e). When a probationer admits to the violations, the procedural due process safeguards and an evidentiary hearing are not necessary. *Parker*, 676 N.E.2d at 1085 [citing *Morrissey*, 408 U.S. at 490; *United States v. Holland*, 850 F.2d 1048, 1050-51 (5th Cir.

1988)]. Instead, the court can proceed to the second step of the inquiry and determine whether the violation warrants revocation. *Id.* In making the determination of whether the violation warrants revocation, the probationer must be given an opportunity to present evidence that explains and mitigates his violation. *Id.* at 1086[] n.4.”

Terrell v. State, 886 N.E.2d 98, 100-01 (Ind. Ct. App. 2008) (quoting *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006)) (emphasis added), *trans. denied*.

- [9] In essence, Martin contends that she was denied an opportunity to present evidence to explain and mitigate her violation. But the record undermines that contention. Martin’s counsel addressed the trial court during the hearing and did not ask that Martin be given an opportunity to speak. Further, on appeal Martin does not state what she would have told the court in an attempt to show mitigating circumstances. We cannot say that the trial court violated Martin’s right to due process when it revoked her work release placement.

Issue Two: Sentence

- [10] Martin next contends that the trial court abused its discretion when it sentenced her to four years executed in the Department of Correction. As we have explained:

Community corrections is “a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting” *Ind. Code § 35-38-2.6-2*. Placement in community corrections is at the sole discretion of the trial court, *see Ind. Code § 35-38-2.6-3(a)* (court “may . . . order a person to be placed in a community corrections program”); a defendant’s placement there is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Million v. State*, 646 N.E.2d 998, 1001

(Ind. Ct. App. 1995). If a defendant violates the terms of his placement in community corrections, the court may:

- (1) Change the terms of the placement.
- (2) Continue the placement.
- (3) Revoke the placement and commit the person to the department of correction for the remainder of the person's sentence.

Ind. Code § 35-38-2.6-5.[2]

. . . Accordingly, if [the defendant] violated the terms of his placement with community corrections, the court could revoke any remaining time with community corrections, *see* Ind. Code § 35-38-2.6-5, regardless [to] which specific community corrections activity he was assigned . . . when the violation occurred.

Toomey v. State, 887 N.E.2d 122, 124 (Ind. Ct. App. 2008). Thus, the Indiana Code squarely permitted the trial court to revoke Martin's placement and commit her to the Department of Correction for four years.

[11] Still, Martin argues that, “[g]iven this was Martin’s first violation, in which she was only gone from the work release facility for a few hours, and given that the State believed an appropriate sanction was only 15 days in jail, the trial court abused its discretion.” Appellant’s Br. p. 12. Although this was Martin’s first violation of *work release*, she had previously violated the conditions of her home detention by using methamphetamine only a few months prior to the instant violation. And the trial court’s discretion is in no way constrained by the State’s recommended sentence. The trial court stated its reasons for the sentence,

including Martin's extensive criminal history and prior failed attempts at rehabilitation. We cannot say that the trial court abused its discretion when it sentenced Martin to four years executed to the Department of Correction.

[12] Affirmed.

May, J., and Bradford, J., concur.