

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Quintin Delany Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 17, 2021

Court of Appeals Case No.
20A-CR-1832

Appeal from the
Madison Circuit Court

The Honorable
Angela Warner Sims, Judge

Trial Court Cause No.
48C01-1510-F3-1811

Kirsch, Judge.

- [1] The trial court revoked Quintin Delany Jackson’s (“Jackson”) participation in a community corrections program and revoked 916 days of Jackson’s work

release to be served in the Indiana Department of Correction (“DOC”).

Jackson appeals the revocation and sentence and raises two issues, which we restate as:

I. Whether the evidence supported the trial court’s decision to revoke Jackson’s participation in community corrections; and

II. Whether revoking 916 days of community corrections to be served in the DOC was an abuse of discretion.

[2] We affirm.

Facts and Procedural History

[3] On October 27, 2015, police received a report that Jackson and another person held two women at gunpoint in the parking lot of the Hoosier Park Casino and demanded money. *Appellant’s Conf. App. Vol. II* at 26. That same day the State charged Jackson with robbery as a Level 3 felony. *Appellant’s App. Vol. II* at 2. On March 13, 2017, Jackson pleaded guilty as charged pursuant to a plea agreement, which capped his executed time in DOC at five years. *Id.* at 60. On April 17, 2017, the trial court sentenced Jackson to ten years, with three years of his executed time suspended to probation and two years of his executed time to be served in community corrections, specifically, the Continuum of Sanctions Program (“COS”), a form of work release in Madison County Community Corrections. *Id.* at 82, 87. The COS Board officially approved Jackson’s participation in that program on January 8, 2020. *Id.* at 121.

[4] Just eleven weeks later, on March 26, 2020, the State filed a petition to revoke Jackson's COS privileges, alleging Jackson violated COS rules by: 1) testing positive for synthetic cannabinoids; 2) having time away from the work release facility for which he had not accounted; and 3) being in arrears on his financial obligations to the Madison County Community Justice Center ("MCCJC"). *Id.* at 124. On April 20, April 30, May 6, 8, and 11, 2020, the State filed amended petitions to revoke Jackson's participation in COS based on new allegations of unaccounted time and another positive drug test for synthetic cannabinoids. *Id.* at 129, 131-35, 138-39. On May 18, 2020, the trial court found that Jackson violated the terms of his work release because he had positive drug screens, had six separate instances of unaccounted time, and was disrespectful to an officer. *Id.* at 142. The trial court "revoke[d] eighteen days to the Madison County Detention Center." *Id.* It also revoked "365 days previously suspended to COS." *Id.* The trial court concluded that Jackson had 916 days left to serve on community corrections, followed by two years on probation. *Id.* Jackson was returned to work release on May 27, 2020. *Id.* at 146.

[5] On July 29, 2020, the State filed a new petition to revoke Jackson's participation in COS, alleging that: 1) Jackson had time unaccounted for on July 15-18, 28, 2020, including more than nine hours of unaccounted time on July 15, more than eight hours of unaccounted time on July 28, and more than five hours of unaccounted time on July 16; 2) on July 20, Jackson returned to the work release facility nearly two hours late from an approved pass; 3) on July

24, Jackson committed failure to return to lawful detention¹ as a Level 6 felony; 4) on July 28, Jackson was “under the influence,” and 5) Jackson owed \$2,185 to MCCJC. *Id.* at 148. On August 5, 2020, the State filed a notice of probation violation, alleging that Jackson failed to complete COS. *Id.* at 154.

[6] The trial court held an evidentiary hearing on September 8, 2020. *Tr. Vol. I* at 2. At the beginning of the hearing, the State asked the trial court to take judicial notice of Jackson’s case file. *Id.* at 6-7. Shawn Sheppard (“Sheppard”), the work release coordinator, testified that Jackson had permission to leave the work release facility on July 15, 2020 to go to his job, but because Jackson did not provide documentation to show that he was actually at work, the time Jackson was away was treated as unaccounted time. *Id.* at 7-9. Jackson had permission to leave the work release facility on July 16, but he returned late and provided no documentation to confirm his whereabouts. *Id.* at 10. On July 17, Jackson was granted a pass to cash a check and obtain a money order, but he returned late and without the money order. *Id.* at 11. On July 18, Jackson was granted a pass to pick up a check, but he returned late. *Id.* at 11-12. On July 20, Jackson reported that he had an appointment with a lawyer but did not provide documentation to confirm that he had actually met with the lawyer. *Id.* at 12.

¹ See Ind. Code § 35-44.1-3-4(c).

- [7] Jackson participated in programs offered by Man4Man,² which included job placement services. *Id.* at 14, 30. On July 24, 2020, Jackson was allowed to go to Man4Man and was required to return to the work release facility by 10:00 a.m. *Appellant's App. Vol. II* at 165. Jackson left the Man4Man facility at 9:00 a.m. but did not return to the work release facility by 10:00 a.m. *Tr. Vol. I* at 14. Jackson's case manager called and spoke to Jackson at 11:00 a.m. and directed Jackson to return to the work release facility. *Appellant's App. Vol. II* at 165. Jackson told his case manager that "he was dealing with some issues and was talking to his mother." *Id.* Another staff member spoke with Jackson at about noon and told Jackson to return to the facility. *Id.* at 164. Jackson finally returned to the work release facility at 2:15 p.m. *Tr. Vol. I* at 14. As a result of this incident, Jackson was charged with failure to return to lawful detention as a Level 6 felony. *Id.* at 170.
- [8] On July 28, Jackson was provided a pass to look for a job. *Id.* at 173. When he returned to the work release facility, Jackson was unable to document his whereabouts and refused to tell staff members where he had been. *Tr. Vol. I* at 14. When he returned, Jackson was "under the influence of [an unknown] substance." *Id.* at 15; *Appellant's App. Vol. II* at 166. That day, Jackson made a payment toward his arrearage with MCCJC. *Tr. Vol. I* at 13.

² Man4Man is "a ministry serving men in the transition from incarceration to freedom in Christ." Man4Man Ministries, man4manministries.com (last visited Mar. 5, 2021).

[9] At the end of the evidentiary hearing, the trial court concluded that the State met its burden to prove that Jackson violated the terms of his work release and probation. *Id.* at 24-25. The trial court noted that the violations the State proved at the evidentiary hearing were similar to Jackson's behaviors that led to the trial court's early finding that Jackson had violated the terms of COS. *Id.* at 33. The court revoked 916 days of work release and ordered those days to be served in the DOC and left intact Jackson's probationary period of two years. *Id.* at 34; *Appellant's App. Vol. II* at 21. Jackson now appeals.

Discussion and Decision

I. Sufficiency of Evidence

[10] Jackson contends the trial court abused its discretion in finding that the State proved by a preponderance of evidence that he violated the requirements of the COS program. "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." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Because of similarities between community corrections and probation, the "standard of review for revocation of a community corrections placement is the same standard as for a probation revocation." *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019). That is, we review for an abuse of discretion, which occurs "when the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

[11] Revocation of a community corrections placement is a two-step process, in which the trial court first makes a factual determination as to whether the defendant violated the terms of his placement or probation. *Treece v. State*, 10 N.E.3d 52, 56 (Ind. Ct. App. 2014), *trans. denied*; *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Because such a proceeding is civil in nature, the State need only prove the alleged violation by a preponderance of the evidence. *Holmes v. State*, 923 N.E.2d 479, 485 (Ind. Ct. App. 2010). If a violation is found, the court then determines whether the violation warrants revocation. *Woods*, 892 N.E.2d at 640. Proof of a single violation is sufficient to permit a revocation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*. As with probationers, those who are placed in community corrections are subject to the conditions of that placement; if they violate those terms and conditions, the community corrections director may change the terms, continue the placement, reassign the person, or ask the trial court to revoke the person's placement. Ind. Code § 35-38-2.6-5(a).

[12] In more specific terms, Jackson contends that the State failed to present sufficient evidence regarding some of its allegations, specifically that: 1) Jackson committed a criminal offense while on community corrections; 2) Jackson failed to pay fees to MCCJC even though he had the financial means to do so; and 3) on July 28, 2020, when Jackson returned to the work release facility from a job search, he was under the influence of an illegal substance. However, Jackson does not dispute that the State presented sufficient evidence to prove the other violations it had alleged: 1) Jackson had unaccounted time

from the work release facility for July 15-18, and 28, 2020, including more than nine hours of unaccounted time on July 15, more than eight hours of unaccounted time on July 28, and more than five hours of unaccounted time on July 16; 2) on July 20, Jackson returned to the work release facility nearly two hours late from an approved pass; and 3) Jackson owed \$2,185 to MCCJC.³ *Id.* at 148. Thus, Jackson concedes that he violated the terms of COS. In considering these acknowledged violations, the trial court correctly found that Jackson violated the terms of COS. *See Treece*, 10 N.E.3d at 56. And because only one violation of the terms of community corrections is needed to support revocation of probation, we need not address Jackson’s argument that the evidence was insufficient to support the State’s allegation that he committed a criminal offense, was under the influence of an illegal substance, and had the financial wherewithal to pay his probation fees. *See Luke v. State*, 51 N.E.3d 401, 421 (Ind. Ct. App. 2016), *trans. denied*. (“The violation of a single condition of probation is sufficient to revoke probation.”). Thus, the evidence supported the trial court’s decision to revoke Jackson’s participation in COS.

II. Sanction

[13] Jackson argues that the trial court abused its discretion by revoking 916 days of community corrections time to DOC. A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a matter of grace

³ While Jackson contends that the State failed to prove that he had the financial means to pay his fees, he does not claim that he did not owe fees to MCCJC.

and a conditional liberty that is a favor, not a right. *Jenkins v. State*, 956 N.E.2d 146, 149 (Ind. Ct. App. 2011), *trans. denied*. “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) (quoting *Prewitt v. State*, 878 N.E.2d 184, 187 (Ind. 2007), *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 grant probation. *Brandenburg*, 992 N.E.2d at 953. Accordingly, we review a trial court’s sentencing decision for a probation violation for an 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.* If a person violates the terms and conditions of community corrections, the community corrections director may change the terms, continue the placement, reassign the person, or ask the trial court to revoke the person’s placement. Ind. Code § 35-38-2.6-5(a).

[14] Jackson begins his first argument by again contending that the State failed to prove that he 1) committed a criminal offense while on community corrections; 2) failed to pay fees to MCCJC even though he had the financial means to do so; and 3) returned to the work release facility from a job search under the influence of an illegal substance. Because of this purported lack of evidence, Jackson argues that “it would by no means be certain that the same sanction would have been imposed absent the unsupported findings.” *Appellant’s Br.* at 11. In support, Jackson quotes *Bethea v. State*, 983 N.E.2d 1134, 1139 (Ind.

2013) for the following proposition: “If the trial court has used improper aggravating factors, we will remand for resentencing if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Appellant’s Br.* at 11 (quoting *Bethea*, 983 N.E.2d at 1139 (internal quotation marks and citation omitted)). Jackson urges us to apply the same reasoning here: “Without the three most serious violations which are not supported by the evidence, there would be no basis to say with confidence that the same sanction would have been imposed.” *Id.*

[15] We reject this argument because it is unsupported by both the facts and the law. First, the trial court did not refer to the three challenged allegations, even in passing, when it sanctioned Jackson. Moreover, Jackson’s argument about weighing aggravators and mitigators invokes a standard that we use when reviewing a sentence imposed after conviction, *see Bethea*, 983 N.E.2d at 1138-39, not a standard we use to review a sentence imposed after revocation of community corrections, as we are asked to do here. Indeed, trial courts are not required to balance aggravating or mitigating circumstances when imposing sentence in a community corrections revocation proceeding. *Treece*, 10 N.E.3d at 59. Thus, Jackson’s argument is unsupported by the facts and the law.

[16] Jackson next argues that his sentence was an abuse of discretion because he was not aware of the rules governing participation in COS. He cites his statement to a case manager that no one had reviewed community corrections rules with him. *Appellant’s App. Vol. II* at 163. However, because Jackson did not raise

this issue in the trial court, he has waived our consideration of this issue on appeal. *See Hilligoss v. State*, 45 N.E.3d 1228, 1231 (Ind. Ct. App. 2015) (“a party waives an issue if it is raised for the first time on appeal.”). Waiver aside, Jackson admitted to the case manager that he had, in fact, read the rules, which supported the inference that Jackson knew the COS rules but nonetheless disobeyed them. *Appellant’s App. Vol. II* at 163. Thus, we find no merit to this argument.

[17] Finally, Jackson argues that his violations of COS rules were merely “technical” and thus did not justify the trial court’s decision to revoke 916 days of community corrections to the DOC. *See Appellant’s Br.* at 2, 4, 7, 12, 13. In *Ripps v. State*, 968 N.E.2d 323 (Ind. Ct. App. 2012), the defendant had pleaded guilty to Class C felony child molesting. The trial court imposed an eight-year sentence suspended to probation, and when the trial court revoked the defendant’s probation, it ordered the defendant to serve the remainder of his suspended term in prison. *Id.* at 327. We found the trial court’s sanction was an abuse of discretion because of the defendant’s health problems but also because the revocation of the defendant’s probation was based on a technical violation; that is, the defendant moved to within 980 feet of a youth program center, a violation of Indiana Code section 35-42-4-11(c), which required the defendant to reside no closer than within 1,000 feet of the youth center, and where there was ambiguity about how the distance between the defendant’s home and the youth center was measured. *Id.* at 328.

[18] Here, Jackson's violations of the terms of the COS program did not resemble the technical nature of the violation in *Ripps*. While perhaps one or two brief periods of unaccounted time may have constituted technical violations, Jackson's numerous and lengthy periods of unaccounted time were more serious than technical violations. Jackson had many periods of unaccounted time, including absences exceeding nine hours, eight hours, and five hours. *Appellant's App. Vol. II* at 154. When Jackson returned from these absences, he sometimes refused to explain why he had exceeded the allowed time for an absence. *Tr. Vol. I* at 14. He also failed to provide documentation that could have explained some of his absences. *Id.* at 7-19; *Appellant's App. Vol. II* at 172. On July 24, 2020, Jackson defied the order of a case manager to immediately return to the work release center. *Appellant's App. Vol. II* at 165. Thus, Jackson's chronic refusal to abide by COS rules regarding the accounting for time was not a technical violation of COS rules but a repeated flouting of COS rules. Accordingly, the trial court did not abuse its discretion by revoking Jackson's 916 days of community corrections to the DOC. *See Prewitt*, 878 N.E.2d at 188 (in sentencing defendant after probation violation, trial court did not abuse its discretion in ordering defendant to serve two years of his previously suspended sentence and to receive treatment at hospital; defendant repeatedly violated his probation and repeatedly failed to complete halfway house program); *see also Jenkins*, 956 N.E.2d at 149-50 (finding no abuse of discretion in revoking twelve years of sentence suspended to probation where the defendant failed to pay court costs and probation fees, failed to report to probation for more than one year, and had four prior violations), *trans. denied*.

[19] Affirmed.

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