

# 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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# IN THE COURT OF APPEALS OF INDIANA

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Marlena A. Pohlman,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 9, 2022

Court of Appeals Case No.  
22A-CR-1639

Appeal from the Vigo Superior  
Court

The Honorable John T. Roach,  
Judge

Trial Court Cause Nos.  
84D01-2004-F4-1486  
84D01-2103-F6-1067

**Brown, Judge.**

- [1] Marlena A. Pohlman appeals the trial court’s order revoking her probation and community corrections placement. We affirm.

### *Facts and Procedural History*

- [2] On September 18, 2020, the trial court entered a judgment of conviction and sentencing order providing that Pohlman pled guilty pursuant to a plea agreement to dealing in methamphetamine as a level 5 felony under cause number 84D01-2004-F4-1486 (“Cause No. 1486”) and possession of methamphetamine as a level 6 felony under cause number 84D01-1910-F4-3949 (“Cause No. 3949”). The court sentenced her under Cause No. 1486 to five years with one year suspended to formal probation and the balance suspended to informal probation and a concurrent sentence of two years under Cause No. 3949 with one year suspended to formal probation and one year suspended to informal probation. The court also ordered Pohlman to complete sober living at Club Soda. The court received a letter from Club Soda dated September 22, 2020, stating that Pohlman was discharged from its residency program after she went to a court appointment and did not return. On October 30, 2020, a notice of probation violation was filed alleging that Pohlman was discharged from Club Soda on September 22, 2020, and tested positive for amphetamines, methamphetamines, ethanol, methadone, marijuana, and opiates on October 21, 2020.
- [3] On March 30, 2021, the State charged Pohlman with resisting law enforcement as a level 6 felony under cause number 84D01-2103-F6-1067 (“Cause No.

1067”) alleging she committed the offense on March 26, 2021. Pohlman and the State entered into a plea agreement pursuant to which Pohlman agreed to plead guilty as charged under Cause No. 1067 and to admit that she violated the terms of her probation under Cause Nos. 1486 and 3949. On July 7, 2021, the court entered a judgment of conviction, sentenced her to one year suspended to formal probation under Cause No. 1067, found that her probation under Cause No. 3949 was terminated as unsatisfactory, and ordered with respect to Cause No. 1486 that she serve the balance of her suspended sentence as a placement on in-home detention through Vigo County Community Corrections (“VCCC”).

[4] On February 14, 2022, the State filed a petition to revoke Pohlman’s placement on in-home detention and probation. The petition alleged that Pohlman tested positive for amphetamine, methamphetamine, cocaine, and THC on October 29, 2021, amphetamine and methamphetamine on November 8 and 19, 2021, and amphetamine, methamphetamine, and THC on November 30 and December 15, 2021. It also alleged that she was not charging her unit or answering phone calls by staff on November 6, 2021, did not call the hotline as required by VCCC on November 11 and 27, 2021, and January 1 and 23, 2022, her fees were in arrears in the amount of \$1,170, and she failed to report to VCCC on February 11, 2022, leaving her whereabouts unknown.

[5] On April 18, 2022, the court held an evidentiary hearing. Abby Sheidler, an employee of community corrections, testified regarding Pohlman’s positive drug screens and failure to charge her GPS unit and call the hotline and that, on

February 11, she cut off her GPS bracelet and absconded. Pohlman testified regarding her divorce, the loss of her parents, and her mental illness, that she was self-medicating with methamphetamine and marijuana, and that she cut off her bracelet.

[6] The court noted the unrefuted evidence, including Pohlman’s admissions, established that she violated her probation and placement. It stated that she violated pretrial placement, probation, and direct placement, showed an inability to follow court orders, and failed the opportunities provided by the court to abide by probation and placement. On May 23, 2022, the court held a dispositional hearing at which it reviewed Pohlman’s credit time. Pohlman testified as to her desire for inpatient treatment, sober living, and house arrest. On June 13, 2022, the court held a sentencing hearing and issued an order stating that Pohlman had failed on multiple occasions to comply with local alternative placement and treatment options and ordering that she serve the balance of her sentences under Cause Nos. 1486 and 1067 in the Indiana Department of Correction (the “DOC”).

### *Discussion*

[7] Pohlman argues that the trial court abused its discretion in revoking her placement in community corrections and her probation. For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*. Both probation and community corrections programs serve as alternatives to

commitment to the DOC and both are at the sole discretion of the trial court. *Id.* Placement on probation or in a community corrections program is a matter of grace and not a right. *Id.* Our standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. *Id.* at 551. The State need only prove the alleged violations by a preponderance of the evidence, we consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses, and if there is substantial evidence of probative value to support the court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Id.* The Indiana Supreme Court has explained that, “[o]nce a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed” and that, “[i]f 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.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007).

[8] The record reveals that the trial court initially placed Pohlman on probation in September 2020 under Cause Nos. 1486 and 3949. After Pohlman pled guilty to resisting law enforcement as a level 6 felony under Cause No. 1067 and admitted that she violated the terms of her probation under Cause Nos. 1486 and 3949, the court sentenced her in July 2021 to probation under Cause No. 1067 and ordered that she serve the balance of her suspended sentence as a placement on in-home detention through VCCC. The court heard evidence

regarding Pohlman's subsequent positive drug screens, her failure to charge her GPS unit, her failure to call the hotline, and that she ultimately cut off her GPS bracelet. We cannot say that the trial court abused its discretion in revoking Pohlman's probation and placement.

[9] For the foregoing reasons, we affirm the trial court's order.

[10] Affirmed.

Altice, J., and Tavitas, J., concur.