

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Aaron Berry,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 13, 2023

Court of Appeals Case No.
23A-CR-1317

Appeal from the Madison Circuit
Court

The Honorable Angela Warner
Sims, Judge

Trial Court Cause No.
48C01-1604-F4-785

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] Aaron J. Berry appeals the revocation of his placement on work release, raising one issue for our review: Did the trial court abuse its discretion when it ordered Berry to serve a portion of his remaining sentence in the Indiana Department of Correction (“DOC”)? Discerning no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In 2016, Berry pleaded guilty to Level 4 felony unlawful possession of a firearm by a serious violent felon. The trial court sentenced Berry to eight years served through community corrections on work release. Berry began serving his sentence at the Madison County Work Release Center in December 2019. Berry was advised of the rules and regulations of the work release program.
- [3] On April 20, 2023—while he was still a participant in the work release program—Berry tested positive for methamphetamine and amphetamine. The next day, Community Justice Center Work Release Officer Shelby McKenzie observed, through video surveillance footage, Berry and another program participant sitting on Berry’s bed together. Because this violated program rules and because Berry looked as if he were “up to no good,” Officer McKenzie went to investigate. *Tr. Vol. 1* at 20. Once she arrived, Officer McKenzie ordered Berry to get off the bed. Berry refused and brushed something off the corner of his bed. After Officer McKenzie’s fourth request, Berry removed himself from the bed. Officers then searched the portion of the bed Berry had attempted to brush off and recovered a white powdery substance, which later

tested positive for methamphetamine. That night, Berry tested positive for methamphetamine and amphetamine again.

[4] A couple of days later, the State petitioned to terminate Berry's work release placement.¹ Berry admitted to testing positive for methamphetamine and amphetamine twice, as alleged in the notice of termination. He also partially admitted he was in arrears, but disputed the amount owed. And following an evidentiary hearing, the trial court found Berry had disobeyed orders and possessed a controlled substance. Based on Berry's violations, the trial court revoked Berry's placement in work release and ordered him to serve three years of his remaining sentence in the DOC. This was the third time Berry's placement in work release had been terminated.

The Trial Court Did Not Abuse Its Discretion

[5] Berry argues the trial court abused its discretion by revoking his placement in work release and ordering him to serve a portion of his remaining sentence in the DOC. On appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as a hearing on a petition to revoke probation. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). If the trial court finds that a person has violated a condition of probation and a

¹ The Notice of Work Release Termination alleged five violations: (1) On April 20, 2023, Berry tested positive for methamphetamines and amphetamines; (2) Berry refused to obey an order from staff; (3) Berry possessed an illegal and/or controlled substance and/or paraphernalia; (4) On April 21, 2023, Berry tested positive for methamphetamines and amphetamines; and (5) Berry had failed to meet his financial obligations to the Madison County Community Justice Center. *See Appellant's App. Vol. 2* at 205.

petition to revoke probation is filed within the probationary period, the trial court may impose one or more of the following sanctions: “(1) Continue the person on probation, with or without modifying or enlarging the conditions[;] (2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period[;] (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.” I.C. § 35-38-2-3(h) (2015).

[6] A defendant is not entitled to serve a sentence in a community corrections program. *Cox*, 706 N.E.2d at 549. Instead, placement in such a program 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)). As such, we review a revocation of a community corrections placement for an abuse of discretion. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019). A trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances. *Id.*

[7] The trial court did not abuse its discretion when it revoked Berry’s work release placement and ordered him to serve a portion of his remaining sentence in the DOC. Berry admitted violating the terms of his work release placement by testing positive for methamphetamine and amphetamine twice. The trial court also determined Berry disobeyed orders and possessed a controlled substance, *i.e.*, two more violations of his work release conditions. To the extent Berry argues he should not be placed in the DOC because he has a substance abuse issue, was “forthcoming with the trial court,” and “was on the path to being a

productive member of the community,” Berry asks that we reweigh the evidence and substitute our judgment for that of the trial court. *Appellant’s Br.* at 9. We must decline this invitation. Put simply, Berry’s continued criminal conduct and disregard for the grace repeatedly extended by the trial court warrant a partially executed sentence.

Conclusion

- [8] Because the trial court acted within its discretion when it revoked Berry’s placement in work release and ordered him to serve a portion of his remaining sentence in the DOC, we affirm.
- [9] Affirmed.

Altice, C.J., and Weissmann, J., concur.