MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Steven C. Henry,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 10, 2021

Court of Appeals Case No.
20A-CR-1336

Appeal from the
Boone Superior Court

The Honorable
Matthew C. Kincaid, Judge

Trial Court Cause Nos.
06D01-1605-F2-90
06D01-1712-F5-2534

Kirsch, Judge.

[1] Steven C. Henry ("Henry") appeals the trial court's revocation of his placement on community corrections and partial revocation of his probation. Henry raises one issue, which we restate as whether the evidence was sufficient that he violated the terms of his community corrections placement and his probation.

[2] We affirm.

Facts and Procedural History

[3] On May 4, 2016, Henry was charged under Cause Number 06D01-1605-F2-90 ("Cause No. 90") with Count I, dealing in methamphetamine as a Level 2 felony; Count II, possession of methamphetamine as a Level 3 felony; Count III, unlawful possession of a firearm by a serious violent felon as a Level 4 felony; Count IV, dealing in a narcotic drug as a Level 4 felony; and Count V, possession of a narcotic drug as a Level 5 felony. *Appellant's App. Vol. 2* at 36. On December 29, 2017, Henry was charged under Cause Number 06D01-1712-F5-2534 ("Cause No. 2534") with Count I, battery resulting in serious bodily injury as a Level 5 felony. *Id.* at 39. On March 8, 2018, Henry and the State entered into a plea agreement, in which Henry agreed to plead guilty to Counts I and III under Cause No. 90, Count I under Cause No. 2534, and to a firearm sentencing enhancement. *Id.* at 41-45. In exchange, the State agreed to dismiss the remaining charges and pending charges in three additional cause numbers. *Id.* at 43. The State agreed to an aggregate sentence recommendation of twenty-eight years with seventeen years executed "open as to placement" and eleven years suspended to probation. *Id.* at 42.

[4] On September 4, 2018, the trial court sentenced Henry pursuant to the plea agreement as follows: twenty years in the Indiana Department of Correction ("DOC") with nine years executed on community corrections and eleven years suspended to supervised probation on Count I under Cause No. 90; a concurrent five years executed in the DOC with all five years executed on community corrections on Count II under Cause No. 90; a consecutive term of five years executed in the DOC on the firearm enhancement under Cause No. 90; and a consecutive three years in the DOC with all three years executed on community corrections on Count I under Cause No. 2534. *Id.* at 47-48. On that same day, Henry also signed and initialed the conditions of his supervised probation.[1] *Id.* at 49-52.

[5] On August 20, 2019, Boone County Community Corrections ("BCCC") Executive Director and probation officer Michael Nance ("Nance") sought the assistance of the Hamilton Boone County Drug Task Force to conduct a visit to Henry's home because of suspicion that Henry was engaging in illegal activity that involved facilitating narcotics transactions. *Id.* at 54; *Tr. Vol. 2* at 33. On the unannounced visit to Henry's residence, Nance was accompanied by Lebanon Police Detective Eric Adams ("Detective Adams"), Carmel Police Detective Troyer, and Carmel Police Officer Jonathan Rice. *Appellant's App. Vol. 2* at 54. During the visit, Nance requested to view Henry's phone, and

[1] The trial court's CCS entry notes that at that time, Henry was not on probation and that the order of probation was "for purposes of assessing court costs only." *Appellant's App. Vol. 2* at 28.

Henry was initially reluctant to consent because the phone had "some private information on it" but "voluntarily" handed his phone over after Nance told him that "one of the stipulations for Community Corrections is that they will allow our office to search their phone." *Tr. Vol. 2* at 33-34. Nance and Detective Adams observed that the phone contained "drug slang," including messages about "suboxone and acid or LSD" as well as steroids and Viagra. *Id.* at 7-8, 34. Henry also admitted to Nance that around July 4, 2019, Henry had taken acid. *Id.* at 34. Henry's phone was turned over to law enforcement, and Detective Adams requested and obtained a warrant to search Henry's phone and his Facebook account because some of the messages originated from Facebook. *Id.* at 8.

[6] The contents of the messages from Henry's phone showed multiple instances between December 2018 and August 2019 in which Henry sought to buy, sell, and consume various drugs. *Ex. Vol. 1* at 5-196; *Tr. Vol. 2* at 23. In one of Henry's messages, dated December 20, 2018, he wrote that acid was "the only sh*t I would feel comfortable doing in my situation[,]" and in a March 6, 2019 message he wrote that since he had been on "house arrest" he "[d]id some acid once but thats [sic] about it they been [sic] on my a*s." *Ex. Vol. 1* at 13, 18. On March 7, 2019, Henry wrote that he wanted to buy fifty hits of acid and that he could generally get 100 hits of acid for $500. *Id.* at 38. In messages dated March 8, 2019 and March 11, 2019, Henry wrote to a friend that he had acid to sell for $10 a hit, writing "I tried it myself [its] good." *Id.* at 39-40. In another March 11, 2019 message, Henry sent to a different individual, who did not

want the acid, "[w]hat would you say if I had some acid[?]" because the acid "came across [his] lap," and Henry also asked that same individual if he could "get any of what was in that one hitter." *Id.* at 29-30. Henry also sent several messages where he was trying to acquire "katie," which was a slang term for spice or synthetic marijuana. *Id.* at 170, 178, 180; *Tr. Vol. 2* at 6. On April 13, 2019, Henry wrote to a friend that he had "a bunch of 200mg Viagra if you know anyone wanting any," which he described as a "[l]ittle side hustle [he] picked up on the low." *Ex. Vol. 1* at 21-22. Henry sent several messages between April and July of 2019 in which he sought to buy steroids. *Id.* at 22-24. In a July 10, 2019 message, Henry was asked why he bought eight hits of acid, and he wrote that it was "for a rainy day." *Id.* at 49. Henry also sent messages in August of 2019, in which he was attempting to obtain suboxone. *Id.* at 146-50.

[7] On August 22, 2019, Boone County Community Corrections ("BCCC") filed a "Notice of Violation Of Term(s) Of Community Corrections And Request For Arrest Warrant," alleging that Henry had violated the terms of his community corrections placement as follows: "On or about August 20, 2019, a home visit was concluded. [Henry] admitted to [Nance] that he had ingested "Cid" (acid/LSD), [] Henry's phone also showed several text messages which indicate further illegal activities." *Appellant's App. Vol. 2* at 53. The notice also included a letter from Nance setting forth additional information about the alleged violation, which included a summary of certain messages showing that Henry had consumed acid on July 3, 2019 and that he was attempting to buy and sell

various drugs and substances. *Id.* at 54-58. BCCC also filed an addendum, which included images of the messages that Nance referred to in his letter. *Id.* at 59-127. On November 20, 2019, a "Petition To Modify And/Or Revoke Probation" was also filed that was based on the August 22, 2019 filing of the notice of community corrections violation. *Id.* at 128-29.

[8] On June 18, 2020, the trial court held a hearing on the alleged violations of Henry's community corrections placement and his probation. *Id.* at 33. At the hearing, Detective Adams testified that his primary duties were to investigate narcotics violations with an emphasis on dealers, that he had received specialized training in narcotics, and was familiar with "street language" and slang used to refer to drugs. *Tr. Vol. 2* at 5-7. Detective Adams testified that the messages were found on Henry's phone on August 20, 2019 and showed Henry's efforts to buy and sell acid and to obtain spice or synthetic marijuana. *Id.* at 8-11. Henry objected to the admission of the messages from his phone because they were "purported to be records from Facebook," but there was no "verification that that's where they actually came from and because they contain many irrelevant . . . entries . . . I would object to their admission. *Id.* at 12.[2] The trial court overruled the objection, stating that there was an adequate

[22] This particular objection to the messages was for State's Exhibits 1 through 9. *Ex. Vol. 1* at 5-51 Henry raised the same objection to the remainder of the messages in State's Exhibits 10 through 21, and in each instance the trial court overruled Henry's objection and admitted the evidence. *Tr. Vol. 2* at 14, 16-17, 19, 21; *Ex. Vol. 1* at 52-196.

foundation and that the trial court would distill the relevant evidence contained with the messages. *Id.*

[9] Detective Adams also testified that the messages showed Henry's attempts to buy and sell steroids, to obtain and distribute suboxone and spice or synthetic marijuana, and to obtain and sell Viagra. *Id.* at 13-21. On cross-examination, Detective Adams indicated that no illegal drugs, spice or synthetic marijuana, Viagra, or steroids were found at Henry's residence, that Henry had no pending criminal charges, and that he was unaware if Henry had ever been in any location where he was not supposed to be pursuant to the terms of his community corrections placement. *Id.* at 27-28. In response to a question as to whether someone else had possession of the phone that another individual could have been sending those messages, Detective Adams indicated he did not know if the phone was registered to Henry but that on the evening of the home visit Henry stated to him that there were messages on the phone from earlier in the day about him trying to obtain suboxone. *Id.* at 29. Detective Adams acknowledged that he was unaware of any drug testing to which Henry was subject and did not check to see if Henry had tested positive for any drugs between December of 2018 and August 2019, the period in which Henry sought to buy, sell, and consume various drugs. *Id.* at 29-30.

[10] Nance testified that at the August 20, 2019 home visit, the messages on Henry's phone contained "information that in [his] training and experience [he] believed to be drug slang. Some information, again, about steroids, Viagra, the acid, and at that point it was pretty much given over to law enforcement to take it

forward from that point." *Id.* at 34. He also testified that Henry had admitted to him that he had taken acid "around the 4th of July" and that he did not seek to administer Henry a drug screen because Henry admitted to the use of acid. *Id.* On cross-examination, Nance acknowledged that Henry was unaware there would be a home visit on August 20, 2019, that no acid, Viagra, steroids, or spice or synthetic marijuana were discovered during the home visit, that he was not aware that Henry had ever been in any location where he was not supposed to be pursuant to the terms of his community corrections placement, and that Henry was subject to a zero-tolerance policy for drug screens while he was living in a residential drug addiction recovery center. *Id.* at 35-36.

[11] After hearing the parties' arguments, the trial court found that the State "has proven by a preponderance of the evidence that [Henry] used illegal drugs while on home detention, [BCCC], and further that the State has proven by a preponderance of the evidence that [Henry] violated the law by selling and or buying illegal drugs while on direct placement home detention." *Id.* at 49-50.[3] After hearing testimony, evidence, and the parties' arguments as to the appropriate sanction on Henry's violations of community corrections and probation, the trial court sanctioned Henry as follows: "On the Community

[3] The petition to revoke his community corrections placement stated that Henry's phone contained evidence of "further illegal activities," and there was testimony and evidence from Henry's phone that Henry sought to have an individual "beat up a couple people." *Tr. Vol. 2* at 22; *Appellant's App. Vol. 2* at 53. There was no specific allegation that Henry violated his community corrections placement and his probation by engaging in such conduct, and the trial court did not base its finding that Henry had committed a violation on that basis. *Tr. Vol. 2* at 49-50.

Corrections violation I'm going to order that he execute the balance of the sentence. On the probation violation I'm going to order that he execute five and one-half years of the sentence that was suspended, eleven years." *Id.* at 77.[4]

[12] On July 8, 2020, the trial court issued its written order finding that Henry violated the terms of his community corrections placement and his probation and sanctioned him by changing the placement of his executed sentence to the DOC and ordering him "to serve 12 years and 55 days on [Cause No. 90] and three years on [Cause No. 2534]," "to execute five years and one hundred eighty-three days of the suspended sentence on cause [Cause No. 90] at the [DOC]" and that he would then be "returned to probation under the same terms and conditions for the balance of the suspended sentence, five years and one hundred eighty-two days on [Cause No. 90]." *Appellant's App. Vol. 2* at 130. Henry now appeals.

Discussion and Decision

[13] Henry argues that the trial court abused its discretion when it concluded he violated his community corrections placement and his probation, ordered him to serve his executed sentence in the DOC, and partially revoked his probation. "Both probation and community corrections programs serve as alternatives to

[4] During the sanctions portion of the June 18 hearing, the trial court stated that it also found "the violations that have been established by the preponderance [of the evidence] on the home detention are also violations of terms of probation even though [p]robation wasn't actively supervising him yet, but they are violations that have been established." *Tr. Vol. 2* at 55.

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.*

[14] Revocation of a community corrections placement or probation is a two-step process, wherein 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*. 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 v. State*, 892 N.E.2d 637, 640 (Ind. 2008). 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).

[15] Henry contends that there was no "substantial evidence of probative value that Henry failed a drug screen[] or possessed or consumed or engaged in the sale of an illegal substance, at any point in time while serving his sentence." *Appellant's Br.* at 12. Henry also appears to argue that the trial court's decision was an abuse of discretion because it relied "solely upon hearsay" and the testimony of Detective Adams and Nance. *Id.*

[16] Henry observes that the record showed he was unaware there would be a home visit, that no acid, Viagra, steroids, or spice or synthetic marijuana were located during the home visit, and that he was subject to a zero-tolerance policy for drug screens while he was living in a residential drug addiction recovery center; however, the petition does not allege that Henry failed a drug screen[5] or that he possessed a controlled substance. *Tr. Vol. 2* at 27-30, 34-37; *Appellant's App. Vol. 2* at 53. Instead, the petition alleged that Henry violated the terms of his community corrections placement as follows: "On or about August 20, 2019, a home visit was concluded. [Henry] admitted to [Nance] that he had ingested "Cid" (acid/LSD), [] Henry's phone also showed several text messages which indicate further illegal activities." *Appellant's App. Vol. 2* at 53. The letter and addendum that were filed along with the petition referred to Henry's consumption of drugs and his efforts regarding the purchase and sale of drugs and other substances. *Id.* at 54-127. At the hearing, Nance testified that Henry

[5] The standard drug screens that Henry was administered did not screen for acid, synthetic marijuana, Viagra, steroids, or suboxone. *Tr. Vol. 2* at 37.

admitted to him at the August 20, 2019 visit to Henry's residence that he took acid, which was a violation of the terms of Henry's community corrections placement and his probation. *Tr. Vol. 2* at 33-34. Henry acknowledged at the hearing that he had consumed acid, referring to the use as a "one-time relapse." *Id.* at 34-35, 47, 49.[6]

[17] To the extent Henry contends that the trial court's admission of the messages on his phone was inadmissible hearsay that formed an invalid basis for the trial court's order finding him in violation, we note that Henry cites no authority in support of his position and has waived this argument on appeal. Ind. Appellate Rule 46(A)(8)(a); *see also Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) ("Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."). Waiver notwithstanding, we will address Henry's argument.

[18] As in a probation revocation proceeding, the rules of evidence do not apply in a proceeding concerning revocation of community corrections placement, and courts may admit evidence during such hearings that would not be admitted in a criminal trial. *See* Ind. Evidence Rule 101(d)(2); *Monroe v. State*, 899 N.E.2d

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[6] To the extent Henry argues that Nance's testimony that Henry told him he had consumed acid was inadmissible hearsay and an improper basis for the trial court's finding him in violation, Henry does not argue fundamental error and has waived this argument for failure to contemporaneously object to the testimony. *See Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019) ("A party's failure to object to, and thus preserve, an alleged trial error results in waiver of that claim on appeal.")

688, 691 (Ind. Ct. App. 2009). Also, as in probation revocation hearings, to protect against evidence being admitted "willy-nilly" in a revocation of community corrections, our Supreme Court requires that hearsay should satisfy the "substantial trustworthiness" test. *Reyes v. State*, 868 N.E.2d 438, 440, 442 (Ind. 2007); *see also Holmes v. State*, 923 N.E.2d 479, 482-85 (Ind. Ct. App. 2010) (applying substantial trustworthiness test in a proceeding to revoke community corrections placement).

[19] Henry was serving his community corrections placement, in part, for his sentence on Level 2 felony dealing in methamphetamine. *Appellant's App. Vol. 2* at 47-48. The contents of the messages from Henry's phone showed multiple instances in which Henry sought to buy, sell, and consume various drugs between December of 2018 and August of 2019. *Ex. Vol. 1* at 5-196; *Tr. Vol. 2* at 23. The trial court admitted the messages over Henry's objection as to their authenticity. "To lay a foundation for the admission of evidence, the proponent of the evidence must show that it has been authenticated." *Pavlovich v. State*, 6 N.E.3d 969, 979-80 (Ind. Ct. App. 2014) (quoting *Hape v. State,* 903 N.E.2d 977, 989 (Ind. Ct. App. 2009)), *trans. denied.* This authentication requirement applies to the substantive content of text messages purported to be sent by a party. *See id.* Indiana Evidence Rule 901(a) provides that "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." "Absolute proof of authenticity is not required." *Fry v. State*, 885 N.E.2d 742, 748 (Ind. Ct. App. 2008), *trans. denied.* Henry does not dispute on appeal that Detective Adams and Nance obtained

his phone directly from him on the day of the home visit, that he was the author of the messages, or that the messages originated from a Facebook account with his name on it. *Tr. Vol. 2* at 7-8, 29, 33-34. Because this was sufficient evidence to authenticate the messages as having been written by Henry, they qualify as non-hearsay statements by a party-opponent. *See* Evid. R. 801(d) (providing that certain statements made by a party opponent are not hearsay). The messages were properly introduced into evidence and authenticated as having been written by Henry. *See Pavlovich*, 6 N.E.3d at 979-80.

[20] The contents of Henry's messages also included his statements that acid was "the only sh*t I would feel comfortable doing in my situation[,]" and that since he had been on "house arrest," he "[d]id some acid once but thats [sic] about it they been [sic] on my a*s." *Ex. Vol. 1* at 13, 18. The messages also showed that Henry wanted to buy fifty hits of acid and that he could generally get 100 hits of acid for $500, that he had acid to sell for $10 a hit, writing "I tried it myself [its] good." *Id.* at 38-40. At one point, Henry asked another individual, who did not want the acid, "[w]hat would you say if I had some acid[?]" because the acid "came across [his] lap," and Henry also asked that same individual if he could "get any of what was in that one hitter." *Id.* at 29-30. He also said that he bought eight hits of acid "for a rainy day." *Id.* at 49. Henry sent several messages where he was trying to acquire "katie," which was a slang term for spice or synthetic marijuana. *Id.* at 170, 178, 180; *Tr. Vol. 2* at 6. Henry said he had "a bunch of 200mg Viagra if you know anyone wanting any," which he described as a "[l]ittle side hustle [he] picked up on the low." *Ex. Vol. 1* at 21-

22. He also sent several messages between April and July of 2019 in which he sought to buy steroids. *Id.* at 22-24. Henry also sent messages in August of 2019, in which he was attempting to obtain suboxone. *Id.* at 146-50.

[21] Despite Henry's contentions to the contrary, the record contained ample evidence that he violated his community corrections placement and his probation, and his requests that the testimony of Detective Adams and Nance and the evidence admitted was insufficient is a request to reweigh the evidence, which we cannot do. *See Cox*, 706 N.E.2d at 551. Additionally, even a single violation supports revocation of an individual's placement on community corrections or probation. *See Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013) ("[P]robation may be revoked on evidence of violation of a single condition.") The testimony that Henry admitted to consuming acid coupled with the statements he made in his Facebook messages was sufficient for the State to prove by a preponderance of the evidence that Henry had violated his community corrections placement and his probation. Therefore, the trial court did not abuse its discretion when it found Henry in violation of community correction rules and in revoking his placement on community corrections and partially revoking his probation.[7]

[7] Henry also appears to argue that because the trial court did not conclude that he engaged in a conversation to "arrange a hit on someone" based on evidence in the form of testimony and recorded communications, that it could not conclude that he "possessed, consumed, or engaged in the sale of an illegal substance when presented with the same type of evidence." *Appellant's Br.* at 13. We need not address this argument because the trial court's finding of a violation was not based on such conduct.

[22] Affirmed.

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