

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Frank Andert,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 17, 2021

Court of Appeals Case No.
21A-CR-1689

Appeal from the Marshall Superior
Court

The Honorable Robert O. Bowen,
Judge

Trial Court Cause No.
50D01-1903-F3-10

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Frank Andert (Andert), appeals the revocation of his community corrections placement.

[2] We affirm.

ISSUE

[3] Andert presents this court with one issue, which we restate as: Whether the State proved by a preponderance of the evidence that he violated the terms of his community corrections placement.

FACTS AND PROCEDURAL HISTORY

[4] On March 7, 2019, the State filed an Information, charging Andert with Level 3 felony possession of methamphetamine, Level 6 felony possession of methamphetamine, and Class B misdemeanor possession or sale of adulterant or synthetic urine. On May 13, 2021, Andert pleaded guilty, pursuant to an agreement with the State, to Level 6 felony possession of methamphetamine. The trial court sentenced Andert to three years, with two years to be served through Marshall County Community Corrections (MCCC) and one year suspended to probation. One of the terms of Andert's community corrections placement was that he abstain from the use of illegal drugs.

[5] After being sentenced on May 13, 2021, Andert immediately reported to Heather Green (Green), his MCCC case manager. As per MCCC's procedure, Andert submitted to an instant-result urine screen. The purpose of the screen

was to provide Green with a baseline reading regarding what illegal drugs Andert had in his system so that Green could have a more informed perspective as to his rehabilitative needs. The screen consisted of a cup which contained multiple reagents testing for various illegal substances. After the cup was filled with urine, the cup would indicate one line for a positive result of a certain drug and two lines for a negative result, similar to a pregnancy test. On May 13, 2021, Andert's urine tested positive for methamphetamine, amphetamine, and MDMA. Andert admitted to Green that he had snorted his girlfriend's Adderall and speculated that he may have inadvertently consumed methamphetamine in the process. MCCC did not penalize defendants for a positive baseline drug screen. Green made an appointment with Andert to return for a second screen on May 18, 2021.

[6] On May 18, 2021, Andert submitted to a second instant-result urine screen which showed a positive result for methamphetamine, amphetamine, and MDMA. Later that day, the State filed a notice of community corrections violation. On May 20, 2021, the trial court held a hearing on the State's motion at which no evidence was received. The trial court revoked Andert's community corrections placement and committed him to the Department of Correction (DOC). On May 27, 2021, Andert filed a motion to reinstate his community corrections placement and requested an evidentiary hearing.

[7] On July 7, 2021, the trial court held a hearing on Andert's motion. Green, who held a bachelor's degree in addictions counseling and who had been a substance abuse educator from 2011 to 2020 prior to becoming a case manager for

MCCC, was experienced at working with drug screens. Green testified that the instant-result drug screens were easy to read and that MCCC routinely used them to conduct its business. Green explained that she knew that the results of Andert's second drug screen indicated that he had consumed illegal drugs after his first test on May 13, 2021, because methamphetamine and amphetamine are usually eliminated from the body after seventy-two hours, but five days had elapsed between Andert's first and second drug screens. In Green's experience, methamphetamine and amphetamine were sometimes eliminated from the body in less than seventy-two hours, but seldom did it take longer than seventy-two hours. The trial court determined that Andert had violated the terms of his community corrections placement by consuming illegal drugs and reiterated its previous order that Andert serve his sentence at the DOC.

[8] Andert now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Andert challenges the evidence supporting the trial court's determination that he violated the terms of his community corrections placement. As part of its sentencing decision, a trial court may suspend a defendant's sentence and order him to be placed in a community corrections program as an alternative to a commitment to the DOC. Ind. Code § 35-38-2.6-3(a). A defendant is not entitled to serve a sentence in a community corrections program. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Such a placement is a matter of grace on the part of the trial court that is a favor and not a right. *Id.* If a trial court

determines that a defendant has violated the terms of his community corrections placement, it may “revoke the placement and commit the person to the . . . [DOC] for the remainder of the person’s sentence.” *See* I.C. § 35-38-2.6-5(4). We review a trial court’s placement revocation by considering all the evidence most favorable to the judgment, without reweighing the evidence or judging the credibility of the witnesses. *Cox*, 706 N.E.2d at 551. If there is substantial evidence of probative value to support the trial court’s conclusion that the defendant has violated a term of his community corrections placement, we will affirm. *Id.*

II. *Analysis*

[10] In *C.S. v. State*, 817 N.E.2d 1279, 1280 (Ind. Ct. App. 2004), juvenile C.S. was placed on probation after being adjudicated a delinquent. C.S. first met with his probation officer five days after the entry of the order placing him on probation and was given a drug screen. *Id.* at 1280. A week later, his probation officer received the results of the screen which showed that C.S. had tested positive for cocaine metabolites. *Id.* At the hearing on the State’s petition to revoke C.S.’s probation, C.S.’s probation officer testified that she had received the results of the urine screen, but the report itself showing the test results was not admitted into evidence. *Id.* at 1281. C.S. challenged the evidence supporting the trial court’s revocation decision, and we reversed, noting that the test was given only five days after C.S. had been placed on probation and that cocaine metabolites continue to appear in the urine for a period of time after cocaine has been ingested. *Id.* at 1281-82. Because the State had produced no evidence

regarding how long cocaine metabolites continue to appear after cocaine ingestion, nor had it produced a prior screen showing C.S. was free of drugs or even evidence of the amount or concentration of the metabolite in C.S.'s urine, we concluded that "we are left to merely speculate whether he used cocaine before or after probation was imposed." *Id.* at 1282.

[11] Andert argues that the State was required to produce evidence of the specific levels of drugs indicated by the drug screens, otherwise Green's conclusion that he had ingested illegal drugs between the two tests was merely "speculation[.]" (Appellant's Br. p. 8). However, unlike the facts of *C.S.*, here, the State did produce evidence from which it could be inferred that Andert had ingested illegal drugs after being placed on community corrections. Andert was informed that, as a term of his MCCC placement, he was required to abstain from illegal drugs. On May 13 and May 18, 2021, he tested positive for methamphetamine, amphetamine, and MDMA. Green testified at the revocation hearing that methamphetamine and amphetamine are usually eliminated from the body within seventy-two hours. Because five days, or 120 hours, had elapsed between Andert's positive drugs screens, the trial court reasonably inferred that Andert had violated the terms of his community corrections placement by consuming methamphetamine and amphetamine between his two drug screens.

[12] Andert implies that, without a comparison of the specific levels of drugs in his system at the time of the two tests showing that the level was higher at the time of his second test, there was no probative evidence to support an inference that

he had consumed illegal substances between the tests. However, the evidence before the trial court was that the urine tests administered to Andert only showed the presence or absence of particular drugs and did not indicate levels or amounts of drugs present in the tested urine. Green's testimony that methamphetamine and amphetamine are usually eliminated from the body within seventy-two hours indicated that if Andert had abstained from those drugs after his test on May 13, 2021, he would have produced a clean screen on May 18, 2021. He did not. Andert essentially requests that we ignore or reweigh this evidence which supports the revocation, which is contrary to our standard of review. *See Cox*, 706 N.E.2d at 551.

CONCLUSION

[13] Based on the foregoing, we conclude that the State produced sufficient evidence to support the trial court's revocation of Andert's community corrections placement.

[14] Affirmed.

[15] Robb, J. and Molter, J. concur