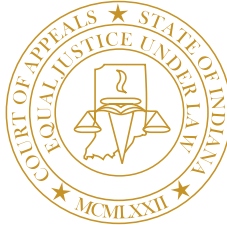


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



# IN THE Court of Appeals of Indiana

Teresa Cole (formerly Teresa Bolen),  
*Appellant-Respondent*

v.

State of Indiana,  
*Appellee-Petitioner*

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July 29, 2024

Court of Appeals Case No.  
24A-CR-656

Appeal from the Dekalb Superior Court  
The Honorable Adam C. Squiller, Judge

Trial Court Cause No.  
17D01-2301-CM-18

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**Memorandum Decision by Judge Brown**  
Judges May and Pyle concur.

**Brown, Judge.**

- [1] Teresa Cole, previously Teresa Bolen,<sup>1</sup> (“Respondent”) appeals the trial court’s order that she serve the entirety of her previously-suspended sentence for violating the conditions of her probation. We affirm.

**Facts and Procedural History**

- [2] In January 2023, the State charged Respondent with: Count I, cruelty to an animal as a class A misdemeanor; and Count II, harboring a non-immunized dog as a class B misdemeanor alleging that she “knowingly or intentionally harbored a dog that is over the age of six (6) months and not immunized against rabies, and the dog caused bodily injury by biting a person[.]”<sup>2</sup> Appellant’s Appendix Volume II at 12. Respondent pled guilty to Count II. On January 10, 2024, the trial court sentenced Respondent to 180 days, all of which was suspended, placed her on probation for one year, and issued Rules of Probation which provided in part: “You shall obey the following special conditions as specified by the Court: 1. May not have pets while on probation.” *Id.* at 18. On January 22, 2024, the State filed a Petition to Revoke or Modify Probation alleging that Respondent failed to comply with the special condition.

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<sup>11</sup> Respondent testified that she married Samson Cole on February 6, 2024. She also indicated that she was previously known as Teresa Ailiff.

<sup>2</sup> Count I alleged that Respondent “had a vertebrate animal in the person’s custody; and recklessly, knowingly, or intentionally neglected the animal.” Information Filed January 10, 2023.

[3] On March 4, 2024, the court held a hearing. Jonnie Larowe, Respondent’s probation officer, testified that she received a report from the Bowen Center on January 17, 2024, that there were dogs in Respondent’s house. She testified that she made contact with Samson Cole, who resided with Respondent, and informed him that she “knew that there were dogs in the home and that they needed to be removed.” Transcript Volume II at 6. She indicated that, on January 18, she received information from the Department of Child Services (“DCS”) that there were animals in the home. Larowe testified that, on January 19, she conducted a home visit and attempted to make contact with Respondent, and Respondent did not answer. She testified “[t]here were three dogs in the window barking at myself and other probation officer and deputy that was there.” *Id.* at 7. Larowe indicated that she took a photograph of the dogs in the window, and the court admitted the photograph.

[4] On cross-examination, Respondent’s counsel asked “I understand that [s]ubsequent to January 19, were you provided with evidence with respect to who owns these dogs,” Larowe stated “[y]es, that was just at our last appointment,” Respondent’s counsel asked “[w]hat was the nature of the evidence,” and she replied “[i]t was a[n] online registration for emotional support animals.” *Id.* at 9. When asked if she had reason to believe that Respondent’s husband owned the dogs, Larowe answered “I think they both own the dogs . . . [b]ecause they are together and they are married and the[y] reside together.” *Id.* at 10. She indicated she did not know the age of the dogs. When asked “so you don’t know if these dogs are in her room or even if she has

access to these dogs,” Larowe replied “[t]hat window appeared to be a living room area, so probably a common area in the home.” *Id.*

- [5] Respondent’s counsel asked Respondent “you acknowledged that a condition of your probation was that you not possess any dogs, correct,” and she replied “[y]es.” *Id.* at 12. When asked for “the name of the dog that you were convicted of not properly immunizing,” she testified “[h]is name was Rock and he was taken the day that it happened” and “I have not had him since.” *Id.* When asked about the dogs depicted in the photograph, she answered: “The little pug nose is Roxy. She is my grandmother’s, who is the owner of the home and the other two . . . are my, husband’s before we even go[t] together.” *Id.* Respondent indicated she had no ownership interest in the home or the dogs. Respondent’s counsel asked if she was “also going through services with” DCS, Respondent replied affirmatively, he asked “[a]nd you have hopes to be able to have your children returned,” and Respondent testified “[y]es. I’m working on that. I’m doing services through Bowen Center for them. . . . Along with drug tests.” *Id.* at 14. She indicated that she did not have the means to live anywhere else. She testified that her husband, Samson, took care of the animals and that she did not. She indicated that, after the home visit, which she became aware of through her security camera, she called probation on January 22. She testified: “We had them [the dogs] taken down to our neighbor’s house for a while until Sam had them, their papers done. Their papers for their registration.” *Id.* at 16. She stated that Samson “would come, go down there to take care of them” and “[h]e’d bring them home for a couple

hours and then take them right back.” *Id.* at 16-17. When asked “[h]ow long had they been back at your home, or are they back at your home now,” she answered “[m]aybe a week,” and when asked “they’d been gone basically all of February it sounds like,” she replied “[y]eah.” *Id.* at 17. The court asked Respondent “I understand, the dogs are back in your home now,” and she responded: “Now.” *Id.* She indicated it was Samson’s decision to bring them back, and when asked “[d]o you know why Sam brought them back,” she answered “[h]e got them registered; Got the papers in the email for the registry.” *Id.*

- [6] On cross-examination, when asked “tell us the underlying basis of the dogs in this case” and “[y]ou had five (5) dogs, I believe, that were taken away from that,” Respondent said “[y]es,” and when asked “Rock was the one that was involved with biting the small child in the face,” she again replied “[y]es.” *Id.* at 18-19. When asked “I thought you were talking a little bit ago about how you had decided you were going to take the dogs to the neighbor’s house,” she replied: “He’s the one who took them down there. When I got put on probation, he agreed to take them down there.” *Id.* at 21. The prosecutor stated, “[n]ot while you were out on probation, when you got in trouble with probation,” and Respondent stated: “Well, I was advised to make sure they were gone and that’s what we did[.]” *Id.* She indicated the dogs were brought back to the house “[a]fter [she] got the paperwork,” and when asked “that’s some online registration to get them classified as emotional support dogs,” she answered: “Yes. For Sam and my grandmother’s dog.” *Id.* When asked how

many dogs were at the residence, Respondent stated “I think there’s three,” and when asked the dogs’ names, she answered: “Jasmine’s not there. It’s Roxy, Blue and the two (2) little ones, Nova and Kilo.” *Id.* at 22. When asked to identify the dogs in the photograph, Respondent stated there was a husky named Blue, a pit-bull mix named Jasmine, and a pug named Roxy.

[7] The court asked Respondent, “[b]efore Ms. LaRowe visited your home and observed the dogs, did you tell anybody with probation that you had dogs in the home that you were living in,” and she responded “No.” *Id.* at 24. The court asked: “When I sentenced you on January 10 of 2024 and I ordered that as a condition of probation, that you [sic] not have any pets in your home while you’re on probation. What did you think that meant?” *Id.* Respondent testified: “I was working on getting rid of them.” *Id.* at 24-25. The court asked: “What did you think, no, no, no. I want you to answer my question. What did you think that meant?” *Id.* at 25. Respondent testified: “To get rid of them. To make sure there wasn’t any there.” *Id.*

[8] Following arguments by counsel, the court stated:

This situation would look completely different to me if, instead of waiting until you got caught violating my orders, if you would have gone to the probation department, explained your situation and tried to come up with a solution that made sense. Instead, you waited until you got caught and then you tried to do some amount of damage control, but then you even undid that. At this point, I have no confidence at all that you’re going to do a single thing that I tell you to do and I do find your behavior to be outrageous, and quite frankly, dangerous. I entered the order that I did because I had very serious concerns about your suitability to care for any

other living creatures and I entered the only order that I really could to try to alleviate that and that order has been openly thwarted. I do terminate your probation unsatisfactorily.

*Id.* at 29-30. The court ordered that Respondent serve her previously-suspended 180-day sentence in the DeKalb County Jail.

## **Discussion**

[9] Respondent asserts the special condition of her probation that she “may not have pets” was unconstitutionally vague. Appellant’s Brief at 10. She argues the provision “does not inform a person of ordinary intelligence that living in the same household with someone who owns pets means the person also ‘has’ a pet, especially when the pet’s registered owner is responsible for its care, and the pet is not under the person’s control.” *Id.* at 11. The State argues that Respondent has waived her claim because she did not raise it before the trial court and that, even if she had not waived her claim, the special condition was not unconstitutionally vague.

[10] We review trial court probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “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.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “If 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.” *Id.* However, to the extent a person challenges a probation

condition on constitutional grounds such as vagueness, our review is de novo. *Weida v. State*, 94 N.E.3d 682, 687 (Ind. 2018).

[11] Respondent did not argue before the trial court that the special condition of her probation was unconstitutionally vague. Thus, she has waived the issue. *See Patton v. State*, 990 N.E.2d 511, 514 (Ind. Ct. App. 2013) (appellant waived claim raised for the first time on appeal that condition of probation was vague).

[12] Even if Respondent had not waived her claim, we would conclude that the special probation condition was not unconstitutionally vague. “We will find a probation condition unconstitutionally vague only if individuals of ordinary intelligence would not comprehend it to adequately inform them of the conduct to be proscribed.” *Weida*, 94 N.E.3d at 688 (citation and internal quotations omitted). “Probation conditions, like criminal statutes, sufficiently inform probationers of restricted actions when they identify the *generally* proscribed conduct.” *Id.* (citation and internal quotations omitted). “Fastidious specificity is not required. In other words, probation conditions need not list, with itemized exactitude, every item of conduct that is prohibited.” *Id.* (citation and internal quotations omitted). When considering a vagueness challenge, we confine ourselves to the facts and circumstances of the case before us. *Id.* We will not allow a probationer to devise hypothetical situations that might demonstrate vagueness. *Id.* We take the challenged probation provisions or language in context, not in isolation. *Id.*

[13] The trial court issued Rules of Probation to Respondent which provided: “You shall obey the following special conditions as specified by the Court: 1. May not have pets while on probation.” Appellant’s Appendix Volume II at 18.

Respondent does not dispute that several dogs were located at and kept in the home in which she lived for significant periods of time after the term of her probation commenced and were at her residence at the time of the revocation hearing. When the court asked Respondent what she thought the special condition meant, she said “I was working on getting rid of them” and then answered: “To get rid of them. To make sure there wasn’t any there.” *Id.* at 25. Taking the challenged provision in context, we find that a person of ordinary intelligence would understand that Respondent’s conduct constituted a violation of the special provision of her probation. Even if Respondent had not waived her claim, we would find that the challenged probation provision was not unconstitutionally vague.

[14] For the foregoing reasons, we affirm the trial court.

[15] Affirmed.

May, J., and Pyle, J., concur.

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