

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bryant Lemont Sykes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 2, 2022

Court of Appeals Case No.
21A-CR-2778

Appeal from the
Marion Superior Court

The Honorable
Jeffrey L. Marchal, Magistrate

Trial Court Cause No.
49D32-1907-F5-29433

Molter, Judge.

- [1] Bryant Lemont Sykes pleaded guilty to Level 5 felony robbery and was sentenced to six years with three executed in the Indiana Department of

Correction (“the DOC”) and three executed with community corrections placement. Within a month of beginning the community corrections portion of his sentence, Sykes was alleged to have committed three violations of the community corrections rules. The State filed a notice of community corrections violation, and after a hearing, the trial court found the allegations to be true. The trial court revoked Sykes’s placement in community corrections and ordered him to serve his remaining sentence of 1,012 days in the DOC. Sykes appeals and argues that the evidence presented was not sufficient to prove any of his community corrections violations. Because we find that the evidence presented sufficiently proved the alleged violations, we affirm.

Facts and Procedural History

- [2] On July 25, 2019, Sykes, pretending he had a gun, robbed a CVS of \$217 from the pharmacy cash register. He pleaded guilty to Level 5 felony robbery on December 11, 2019, and was sentenced to a six-year aggregate sentence, with three years executed in the DOC followed by three years executed on community corrections placement.
- [3] On September 16, 2021, Sykes began serving the community corrections portion of his sentence at Duvall Residential Center (“Duvall”). When he arrived, he was provided a handbook of the facility rules and signed a contract agreeing to abide by those rules. The rules included a prohibition against unauthorized possession of property, a prohibition against being intoxicated, and a prohibition against starting unauthorized fires.

[4] On October 11, 2020, Sykes went into the shower area at Duvall fully clothed and not carrying any shower items. Corrections Officer Luke Hargrave went to the shower area to investigate and saw Sykes looking over the shower curtain. When Sykes saw Hargrave, he immediately turned away and tried to go further into the shower. Hargrave opened the shower curtain and observed Sykes fully clothed with his fist balled up. Hargrave asked Sykes what he was doing, and Sykes responded that he was looking for his soap. Sykes then turned around, grabbed an empty soap box, and threw it. Hargrave told Sykes to give him what Sykes had in his hand, but Sykes threw everything in his hand behind him.

[5] Hargrave collected the items Sykes threw down, which turned out to be waxed paper with other papers rolled up inside it. Based on his training and experience, Hargrave knew the rolled-up papers could be used to ingest illicit substances by spraying chemicals on the rolled-up paper and then smoking the paper. The only place waxed paper could be obtained in Duvall was in the kitchen, and under the rules and regulations at Duvall, waxed paper is not listed as “approved property” that a resident may possess. Tr. Vol. II at 23–25; Ex. 1 at 10.

[6] At about 4:09 a.m. on October 12, 2021, Sykes was observed walking around in the restroom area of Duvall. He walked around the restroom area for approximately ninety seconds and was able to walk and showed no balance issues. For a portion of this time, he was out of the camera’s viewing area. Sykes then began staggering around and smiled, talked to himself, and moved

his arms as if punching the air for about fifty seconds before he lost his balance and fell over onto the floor. While on the floor, Sykes continued to move around and appeared to talk to himself but could not stand up on his own or with the help of Duvall staff. Staff members asked Sykes if he was okay and if he could stand, but he only responded “yeah, yeah, yeah” to the questions and was not aware of his surroundings. Staff members observed that the behavior was unusual for Sykes, believed he was under the influence of some type of substance in violation of the Duvall rules, and called for emergency medical services. Sykes was transported to the hospital and returned to Duvall four to six hours later. While Sykes was at Duvall, he had two prior positive drug screens that were handled administratively.

[7] At around 6:03 p.m. on October 12, 2021, Sykes was in the A-dorm at Duvall wearing a brown shirt and standing near the bunks. He walked from one bunk to another, took something from the storage area under the second bunk, cupped his hand, and walked toward a group of men standing near a soda machine. Those men then walked out of the dorm, and Sykes walked to a microwave and put something into the microwave. Almost immediately, the microwave started sparking, and a fire was seen inside the microwave.

[8] After a few seconds, Sykes opened the microwave door and took something out of the microwave and walked toward the group of men, who were then standing in the doorway. Sykes returned to the same bunk as earlier and retrieved another item from the storage area under the bunk. He then walked toward a couple of the men and appeared to speak with a man in a gray hoodie.

Sykes returned to the microwave and put something inside. The microwave again started sparking almost immediately, and there was a fire inside the microwave. Sykes opened the door to the microwave, removed something from inside, and handed something to the man in the gray hoodie. Staff were alerted to the smell of smoke in the A-dorm and did not initially find anything, but when they reviewed the surveillance video, the staff determined that Sykes had created a fire in the microwave. Under the Duvall rules in the handbook, arson is defined as setting a fire without authorization.

[9] On October 12, 2021, community corrections filed an initial notice of violation, which was amended the next day. The violations notices alleged that Sykes violated the rules and regulations of Duvall regarding the Unauthorized Possession of Property on October 11, 2021, Intoxicating Substances on October 12, 2021, and Arson on October 12, 2021. On November 18, 2021, a hearing was held concerning these violations. At the hearing, Sykes testified that he did nothing wrong and was “targeted at Duvall.” Tr. Vol. II at 40–44.

[10] At the conclusion of the hearing, the trial court found “the State’s witnesses to be more credible” than Sykes and the video showing two of the three incidents to be compelling evidence. *Id.* at 48–49. The trial court then found, based on the evidence presented, that the State had proven by a preponderance of the evidence that Sykes violated the terms of community corrections in all three allegations. *Id.* at 49. It revoked Sykes’s community corrections placement and sentenced him to serve the remaining 1,012 days of his sentence in the DOC. *Id.* Sykes now appeals.

Discussion and Decision

[11] Sykes contends that the State failed to present sufficient evidence to support his three alleged violations of his community corrections placement and therefore did not meet its burden of proving the allegations by a preponderance of the evidence. “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). Both probation and community corrections programs serve as alternatives to commitment to the DOC, and placement in both are made at the sole discretion of the trial court. *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). “A defendant is not entitled to serve a sentence in either probation or a community corrections program, and placement in either is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Id.*

[12] We review a trial court’s revocation of the defendant’s community corrections placement for an abuse of discretion. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Id.* A probation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Cox*, 706 N.E.2d at 551. When reviewing a revocation of community corrections placement, we “consider all the evidence most favorable to supporting the judgment of the trial court” and do not reweigh the evidence or judge the credibility of witnesses. *Id.* So long as there is “substantial evidence of probative value to support the trial court’s

conclusion” that the defendant violated any term of his placement in community corrections, we will affirm the trial court’s decision to revoke that placement. *Id.*

[13] The evidence presented to the trial court was sufficient to prove by a preponderance of the evidence that Sykes violated the rules of community corrections at Duvall. Although Sykes testified that he did nothing wrong and was “targeted at Duvall,” the trial court found “the State’s witnesses to be more credible” than Sykes and the video showing two of the three incidents to be compelling evidence. Tr. Vol. II at 40–44, 48–49.

[14] As to the first allegation, the facility rules in the handbook prohibit the “unauthorized possession of property,” which includes unauthorized possession of “State property,” unauthorized “property belonging to another person,” and unauthorized “possession, alteration, removal, or relocation of personal property.” Ex. 1 at 19, 22. On October 11, 2021, Sykes was found fully clothed in the shower in possession of waxed paper that contained additional rolled-up papers. The waxed paper and rolled-up papers were known by staff members as paraphernalia that people used to ingest drugs by soaking the paper in chemicals and then smoking the papers. The Duvall rules prohibit “making or possessing intoxicants,” and intoxicating substances include “chemical-soaked paper.” Ex. 1 at 18–19.

[15] The only place waxed paper could be obtained in Duvall was in the kitchen or outside the facility, and under the rules and regulations at Duvall, waxed paper

is not listed as “approved property” that a resident may possess. Tr. Vol. II at 23–25; Ex. 1 at 10. Additionally, Sykes’s actions suggest that he knew he was not supposed to possess the waxed paper. When Sykes saw a staff member approach him in the shower, Sykes immediately turned away and tried to go further into the shower. When asked what he was doing, Sykes responded that he was looking for his soap and then turned around, grabbed an empty soap box, and threw it. When told to hand over what he was holding in his hand, Sykes threw everything in his hand behind him. The evidence presented showed by a preponderance of the evidence that Sykes violated the rule against unauthorized possession of property.

[16] As to the second violation, in the early morning hours of October 12, 2021, Sykes was observed by staff staggering in the restroom area, smiling and talking to himself, and moving his arms as if punching the air for about fifty seconds before losing his balance and falling over onto the floor. Prior to falling down, Sykes was observed walking normally and showing no balance issues, and for a portion of this time, he was out of the camera’s viewing area. While on the floor, Sykes continued to move around and appear to talk to himself but could not stand up on his own or with help from Duvall staff. Staff were familiar with Sykes’s behavior before this incident and observed this behavior to be unusual and believed he was under the influence of some type of substance in violation of the Duvall rules. Sykes’s strange behavior, coupled with the fact that he had been found to be in possession of suspected paraphernalia used to ingest illicit substances, created a reasonable inference that he was under the influence of

some substance at the time. It is against the rules of Duvall for a resident to be under the influence of any intoxicating substance. The evidence presented was sufficient to prove by a preponderance of the evidence that Sykes violated the rules of community corrections related to intoxicating substances.

[17] As to the third violation, later in the day on October 12, Sykes started two unauthorized fires in the microwave of his dorm, which was observed on surveillance footage. On two separate occasions, Sykes retrieved items from his bunk, spoke to a group of men, walked to the microwave, opened the door, placed an item into the microwave, started the microwave and watched it spark and flame up inside for several seconds. Starting two fires in the same manner within such a short time period demonstrated that Sykes intentionally started the fires in the microwave. Under the Duvall rules in the handbook, arson is defined as setting a fire without authorization. Testimony from staff at Duvall established that Sykes did not have authorization to start the fires in the microwave. The evidence presented was therefore sufficient to prove by a preponderance of the evidence that Sykes violated the rules at Duvall related to arson.

[18] Contrary to Sykes's contentions, the State presented sufficient evidence to prove he committed all three violations alleged against him, and the trial court did not abuse its discretion when it revoked Sykes's community corrections placement and ordered the remainder of his sentence executed in the DOC. *See Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015) (a single violation is sufficient to revoke probation).

[19] **Affirmed.**

Mathias, J., and Brown, J., concur.