

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Gary M. Conner,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 30, 2023

Court of Appeals Case No.  
22A-CR-2617

Appeal from the Warren Circuit  
Court

The Honorable Sean Persin,  
Special Judge

Trial Court Cause No.  
86C01-1310-FB-75  
86C01-1309-FB-65

**Memorandum Decision by Judge Riley.**  
Chief Judge Altice and Judge Pyle concur.

**Riley, Judge.**

## **STATEMENT OF THE CASE**

- [1] Appellant-Defendant, Gary Conner (Conner), appeals the trial court's revocation of his probation and the imposition of his previously-suspended sentence.
- [2] We affirm.

## **ISSUES**

- [3] Conner presents this court with two issues on appeal, which we restate as:
- (1) Whether the trial court erred in denying Conner's motion to suppress because the search of his residence violated his rights under the Fourth Amendment of the United States Constitution; and
- (2) Whether the trial court abused its discretion when it ordered him to serve the entirety of his previously-suspended sentence.

## **FACTS AND PROCEDURAL HISTORY**

- [4] On March 5, 2014, Conner pleaded guilty to two Counts of robbery, Class B felonies in Cause Number 86C01-1309-FB-65 (Cause -65), and to one Count of burglary, a Class B felony and one Count of escape, a Class C felony in Cause Number 86C01-1310-FB-75 (Cause -75). The Warren Circuit Court in Warren County sentenced Conner on April 1, 2014, to concurrent ten-year terms for the two Counts in Cause -65, and ten- and four-year terms for the two Counts in Cause -75. His sentences in the two causes were to run consecutively, resulting in an aggregate sentence of twenty years. Conner was to serve nine years in the

Department of Correction (DOC), with five years through direct commitment to West Central Regional Community Corrections (WCRCC) and six years suspended to probation. Pursuant to the terms of his probation, Conner agreed to abstain from using illegal drugs and not commit any new offenses, among other things.

[5] On May 1, 2017, Conner filed a petition to modify his sentence, seeking early release from the DOC and direct commitment to the WCRCC. On June 29, 2017, the trial court granted Conner's petition, suspending the remainder of Conner's executed sentence, and ordering his immediate release to Benton County Probation.<sup>1</sup>

[6] On January 19, 2018, Conner provided a urine specimen that tested positive for methamphetamine. As a result, the State filed a petition to revoke Conner's probation and community corrections placement in Causes -65 and -75. The parties appeared in court on May 21, 2018, and informed the court that they had reached an agreement. Under this agreement, Conner's probation in Causes -65 and -75 was to be extended by six months, and he also signed amended rules of probation.

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<sup>1</sup> It appears that despite Conner being initially assigned to complete five years of his community corrections in WCRCC, the new order specified that Benton County Probation would supervise Conner's sentence. However, it is worth noting that Benton County Probation does not offer community corrections and only provides a home detention program.

[7] On March 4, 2020, Conner tested positive for methamphetamine. Later, on May 17, 2020, Conner was charged with Level 6 felony battery on a public safety official in White County in Cause Number 91D01-2006-F6-000107 (Cause-107). In addition to this, Conner failed to report to his probation officer for his convictions in Causes -65 and -75 on July 28, 2020. Consequently, the State filed yet another petition to revoke Conner's probation and community corrections placement in Causes -65 and -75. On September 25, 2020, Conner admitted to the allegation made in the State's petition. As a result, the trial court revoked two years of Conner's probation and he was ordered to serve two years in community corrections with an initial placement in Tippecanoe County Probation's work release facility.

[8] Ten days after the trial court's order, Conner committed Class A misdemeanor resisting law enforcement in Tippecanoe County.<sup>2</sup> As result of his new offense, Conner's ankle bracelet issued by the Tippecanoe County Probation was removed, and his placement at the Tippecanoe County work release facility was terminated. On November 7, 2020, the State filed a second petition in Causes -65 and -75 to revoke Conner's community corrections placement. Conner admitted to the allegations in the petition and the trial court revoked the balance of Conner's community corrections sentence and ordered his commitment to the DOC. On May 14, 2021, Conner filed a petition to modify his placement from the DOC to house arrest. On the same day, the trial court

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<sup>2</sup> We were unable to locate a cause number for this case in the record.

granted Conner's request, ordered his release, and directed his house arrest under the supervision of Benton County Probation Department. On December 31, 2020, Conner completed his community corrections commitment in Causes -65 and -75, but he had "[l]ike seven (7) years and some days" left of his probation in Warren County. (Transcript Vol. II, p. 8).

- [9] On July 2, 2021, pursuant to a plea agreement in Cause-107, Conner pleaded guilty to the Level 6 felony battery against a public safety official as charged in White County. As a result, the trial court ordered Conner to serve two years, with one year suspended to probation and with the executed portion of his sentence to be served on home detention through Benton County Probation Department. On October 14, 2021, the State filed a petition to revoke Conner's probation in Cause -107, based on a failed a drug screen. Conner admitted to the allegation in the State's petition, and as a sanction for the violation, the trial court ordered Conner to serve 126 days in the White County Jail from October 22, 2021, and upon his release on December 23, 2021, he was ordered to continue serving his sentence in home detention under the supervision of the Benton County Probation Department. Regarding his home detention, Conner signed the Benton County Home Detention Program Rules, which stipulated that Conner's home detention would commence on September 29, 2021, and end on March 26, 2022. Among other things, the rules provided that Conner had waived his Fourth Amendment right to searches and seizures conducted by home detention staff.

[10] On March 28, 2022, Marci Maris (Maris), the Chief Probation Officer of Benton County, received a tip from an employee of the Department of Child Services (DCS) regarding unlawful substance use by Conner. The next day, Maris, along with another probation officer and a Benton County police officer, visited Conner's home. They found the door to Conner's home partially open, and Maris knocked for a reasonable amount of time before Conner finally came to the door. Maris explained that she was there for a home visit and asked to come in. Conner and his wife sat down with Maris, and Conner explained how he needed treatment for his drug addiction. While Maris and Conner talked, the other probation officer searched Conner's home. Although the initial search yielded nothing, Conner's wife later showed them where the methamphetamine was located. Conner then confessed to Maris that it took him so long to come to the door because he had used methamphetamine the day before, which was why he was asleep when Maris arrived. Based on Conner's confession, Maris conducted a urine screen, which revealed the presence of methamphetamine in Conner's system.

[11] A day later, the State charged Conner with Level 6 felony possession of methamphetamine in Cause Number 04C01-2203-F6-85 (Cause -85). On May 23, 2022, the State filed a petition to revoke his probation in Causes -65 and -75, citing the new offense and his positive test for methamphetamine. Conner filed a Motion to Suppress, arguing that Benton County Probation "did not have the authority to enter [his] residence and or test [him]." (Appellant's App. Vol. II, p. 80). He also claimed that he "was not on any supervision and Benton

County did not legally have [him] in its control as [he] was off of house arrest on March 26, 2022, and was being held on house arrest illegally.” (Appellant’s App. Vol. II, p. 80).

[12] On October 3, 2022, a combined Motion to Suppress and fact-finding hearing on the State’s petition to revoke Conner’s probation in Causes -65 and -75 was held. Following the hearing on the Motion to Suppress, the trial court denied the motion and proceeded to hear evidence of Conner’s probation violation. At the conclusion of the evidence, the trial court revoked Conner’s probation in Causes -65 and -75. On October 11, 2022, the trial court issued an order regarding the revocation, which stated in part:

[Conner] has been serving time on community corrections and probation for several years. He knows he cannot use unlawful substances. Here, a tip was received from [DCS] that [Conner] was using drugs and there was reasonable suspicion for a home visit. Benton County Probation officers and a Benton County Sheriff’s deputy went to [Conner’s] home. [Conner] told them he needed help and then voluntarily agreed to submit to a drug screen, which returned positive for methamphetamine.

[Conner’s] Motion to Suppress is based on his attorney’s contention that community corrections officials “raided” [Conner’s] home when he should have been off community corrections. There is no evidence of a raid. Nonetheless, the [c]ourt does not need to reach the issue of whether the home was properly searched, since there is clear evidence that [Conner] voluntarily admitted to using drugs and then tested positive for methamphetamine. The Motion to Suppress is DENIED.

The [p]etition for [r]evocation of [p]robation is GRANTED, but based only on the positive drug screen, and now new charges for possession of methamphetamine, as charged in [Cause-85]. The [c]ourt revokes the balance of [Conner's] suspended sentence of 1,815 days all of which shall be served in the [DOC]. Revocation of entire sentence is appropriate in light of the following prior violations:

1/19/18	[Conner] tested positive for methamphetamine, resulting in an extension of probation of six months[.]
3/4/20	[Conner] tested positive for methamphetamine, resulting in revocation of two years, to be served on community corrections[.]
11/5/20	[Conner] violated probation by failing to maintain good and lawful behavior by committing the offense of Resisting Law Enforcement, resulting in revocation of two years, to be served in the [DOC].

(Appellant's App. Vol. II, pp. 81-82).

[13] Conner now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Motion to Suppress*

[14] Our analysis for a motion to suppress on appeal is similar to our review of other sufficiency matters. *Bonner v. State*, 776 N.E.2d 1244, 1246-47 (Ind. Ct. App.



2002) *trans. denied*. We do not reweigh evidence, and there “must be substantial evidence of probative value in the record to support the trial court’s decision.” *Shuler v. State*, 112 N.E.3d 180, 186 (Ind. 2018). When a trial court’s denial of a defendant’s motion to suppress involves the constitutionality of a search or seizure, it presents a question of law which requires *de novo* review. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014).

[15] Conner advances a claim that the search of his home was in violation of his right under the Fourth Amendment to the United States Constitution because he was not under the supervision of Benton County Probation Department since he had completed his community corrections for his conviction in White County “three (3) days before the Benton County Corrections/Probation conducted its warrantless search” of his residence. (Appellant’s Br. 15).

[16] The Fourth Amendment to the United States Constitution protects persons from unreasonable search and seizure by prohibiting, as a general rule, searches and seizures conducted with a warrant that is not supported by probable cause. U.S. Const. amend. IV. A probationer’s home, like anyone else’s, is protected by the Fourth Amendment’s requirement that searches be reasonable. *Griffin v. Wisconsin*, 483 U.S. 868, 873, 107 S.Ct. 3164, 3168, 97 L.Ed.2d 709 (1987). “[A]ffording probationers lesser protections is predicated on the premise that probation officers, or police working with probation officers, are conducting searches connected to the enforcement of conditions of probation and not for normal law enforcement purposes.” *Allen v. State*, 743 N.E.2d 1222, 1227 (Ind. Ct. App. 2001) (quotation omitted). When a search is not conducted within the

regulatory scheme of probation enforcement, a probationer's normal privacy rights cannot be stripped from him. *Id.* at 1228. The burden is on the State to prove that a warrantless search of a probationer was a probationary search and not an investigatory search. *Id.* With that said, in order to determine whether the search of Conner's residence was probationary or investigational, we first must determine whether the search was probationary. *See id.* Conner's residence will be subject to probable cause requirements if we determine that it was not conducted within the regulatory scheme for probation enforcement. *Id.* Nevertheless, if the search is considered probationary in nature, we must also determine if it is reasonable, which is also an argument advanced by Conner on appeal.

[17] In this case, Conner was under probationary supervision in two counties. In Warren County, he was ordered to serve five years of his sentence in Causes -65 and -75 under community corrections. Conner successfully completed this community corrections program on December 31, 2019, while being supervised by Benton County Probation. At that time, Conner still had “[l]ike (7) years and some days” left to serve on probation, which commenced on January 1, 2020. (Tr. Vol. II, p. 9). As for Conner's probation in White County in Cause -107, he began community corrections on September 26, 2021, which was later modified to home detention, and he was expected to be discharged on March 26, 2022. Benton County Probation was responsible for supervising Conner's home detention. Three days later, on March 29, 2022, Maris, together with another probation officer and a Benton County law enforcement officer,

conducted a search of Conner's home while carrying out her function as Conner's supervisor in relation to the White County case. The search was based on a tip from a DCS employee who had given reliable tips in the past. Maris testified at the suppression hearing that she believed Conner was still on home detention during the visit, and that she had reasonable suspicion that Conner was violating the terms of his home detention, hence the need for the search. Maris also testified that Conner's home detention status was only established after he was in custody for the possession of methamphetamine as charged in Cause -85.

[18] To the extent that Conner claims that Benton County Probation had no authority to search his home because he had finished his home detention in White County on March 26, 2022, Maris testified at the probation revocation hearing that while Conner was scheduled to complete his home detention on that date, he still needed to undergo a "review" before being released. (Tr. Vol. II, p. 34). According to Maris' testimony, Benton County Probation had not yet evaluated Conner to confirm whether he had complied with the terms of his home detention, and he was still technically under their supervision until the review was completed. Consequently, Conner's argument that Benton County Probation had no supervisory role to conduct the search is unfounded, as he had not been evaluated to be effectively discharged from home detention and was still subject to probationary searches. Therefore, the evidence strongly suggests that the search was not investigatory but probationary in nature.

[19] We now turn to the issue of whether the search was reasonable. To determine whether a particular search is reasonable, we must balance Conner's Fourth Amendment interests with legitimate governmental interests. *See Purdy v. State*, 708 N.E.2d 20, 24 (Ind. Ct. App. 1999). As noted, the State has the burden of demonstrating that the warrantless search was probationary in nature and not a general investigation. *Allen*, 743 N.E.2d at 1227. "[A]t a minimum, there must be a reasonable suspicion that the conditions of probation are being violated in order for a probation search to be reasonable." *Fitzgerald v. State*, 805 N.E.2d 857, 865 (Ind. Ct. App. 2004). After receiving a tip from a DCS employee concerning Conner's use of drugs, Maris conducted a home visit. During the visit, Conner confirmed Maris' suspicion and confessed to her that he had a drug problem, that he needed treatment, and had used methamphetamine the previous day. Therefore, a reasonable suspicion existed in this case, and Conner's constitutional rights against unreasonable search and seizure were not violated.<sup>3</sup> Based on the foregoing, we conclude that the trial court did not abuse its discretion when it denied Conner's motion to suppress.

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<sup>3</sup> To the extent that Conner asserts that the methamphetamine recovered from the search should have been suppressed, as it constituted the fruit of the poisonous tree, the trial court ruled that it would not use that evidence to find a violation in Conner's probation. It is worth noting that the "'fruit of the poisonous tree' doctrine is one facet of the exclusionary rule of evidence which bars the admissibility in a criminal proceeding of evidence obtained in the course of unlawful searches and seizures." *Nowling v. State*, 955 N.E.2d 854, 864 (Ind. Ct. App. 2011) (quotation omitted). "When applied, the [fruit of the poisonous tree] doctrine operates to bar not only evidence directly obtained, but also evidence derivatively gained as a result of information learned or leads obtained during an unlawful search or seizure." *Id.* (quoting *Adams v. State*, 762 N.E.2d 737, 745 (Ind. 2002)). As we discussed in this section, the search was not unreasonable, and if the trial court admitted evidence of the search during Conner's probation revocation hearing, which it stated that it did not, it would not have been erroneous.

## II. Probation Revocation

[20] When reviewing an appeal from the revocation of probation, we consider only the evidence most favorable to the judgment, and we will not reweigh the evidence or judge the credibility of the witnesses. *Piper v. State*, 770 N.E.2d 880, 882 (Ind. Ct. App. 2002), *trans. denied*. “Probation is a matter of grace left to the trial court’s discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “The trial court determines the conditions of probation and may revoke probation if the conditions are violated.” *Id.*

[21] “Probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually occurred. . . . [T]hen, the trial court must determine if the violation warrants revocation of the probation.” *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008) (citation omitted). The probationer must be given an opportunity to present evidence explaining and mitigating his violation before a revocation decision is made. *Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006). As long as the proper procedures have been followed in conducting a probation revocation hearing, “the trial court may order execution of a suspended sentence upon a finding of a violation by a preponderance of the evidence.” *Goonen v. State*, 705 N.E.2d 209, 212 (Ind. Ct. App. 1999). Conner contends that the trial court abused its discretion when it ordered him to serve the entirety of his previously-suspended sentence in Causes -65 and -75 in the DOC.

[22] Conner's aggregate sentence in Causes -65 and -75, as ordered in 2014, required him to serve nine years in the DOC, with five years in community corrections, and six years on probation. After serving four years in the DOC, his sentence was modified. He was granted an immediate release in 2017 and was allowed to complete the remainder of his sentence in community corrections. However, he violated his probation in 2018, received a six-month extension on his sentence, and was required to undergo drug treatment. Between April 2020 and September 2020, he violated his community corrections sentence multiple times, and the trial court sentenced him to two years in the DOC based on those violations. In November of that same year, he faced a third petition to revoke his community corrections sentence and was ordered to return to the DOC in April 2021. Shortly thereafter, the trial court showed further leniency to Conner and granted his request to modify his placement to house arrest. We note that while Conner completed his community corrections sentence in December 2019, he still had seven years left to serve on probation and he violated the terms of his probation by using methamphetamine in March 2022.

[23] Despite Conner's assertion that the trial court's revocation of his probation is illogical based on the facts and circumstances, the evidence presented at the evidentiary hearing shows that he repeatedly violated the terms of his probation and committed new offenses, including drug use. In spite of the trial court's remarkable patience and leniency in the past, Conner's persistent noncompliance with the conditions of his probation indicates a reckless indifference to the court's authority and a lack of respect for the law. *See*

*Terpstra v. State*, 138 N.E.3d 278, 289-90 (Ind. Ct. App. 2019) (holding there was no abuse of discretion where the trial court ordered defendant to serve entire sentence after the defendant committed a new crime while on probation), *trans. denied*. For the foregoing reasons, we cannot conclude that it was an abuse of the trial court's discretion to order Conner to serve the entirety of his previously-suspended sentence.

## CONCLUSION

[24] In sum, we conclude that the trial court did not err in denying Conner's motion to suppress. We also conclude that the trial court did not abuse its discretion in revoking Conner's probation and imposing the balance of his previously-suspended sentence.

[25] Affirmed.

[26] Altice, C. J. and Pyle, J. concur