MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

David W. Stone IV
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael Love,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 26, 2021

Court of Appeals Case No. 21A-CR-478

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley, Judge

Trial Court Cause Nos. 48C06-2005-F6-1009 48C06-1910-F4-2556

Brown, Judge.

[1] Michael Love appeals the revocation of his placement in the Continuum of Sanctions Program. We affirm.

Facts and Procedural History

[2] On October 24, 2019, the State charged Love with unlawful possession of a firearm by a serious violent felon as a level 4 felony under cause number 48C06-1910-F4-2556 ("Cause No. 2556"). On May 1, 2020, the State charged Love with domestic battery as a level 6 felony and resisting law enforcement as a class A misdemeanor under cause number 48C06-2005-F6-1009 ("Cause No. 1009").

[3] On May 18, 2020, the State charged Love under Cause No. 2556 with intimidation as a level 6 felony as Count II. That same day, Love and the State filed a plea agreement in which Love agreed to plead guilty to intimidation as a level 6 felony under Cause No. 2556 and guilty as charged under Cause No. 1009, and the State agreed to dismiss the remaining charge and to recommend that the sentence "be imposed as follows: Open to the Court, but [Love] shall serve the aggregate executed portion of the sentence, if any, on community corrections." Appellant's Appendix Volume II at 150.

[4] That same day, the court sentenced Love under Cause No. 2556 to two years in the Department of Correction ("DOC") executed in the Continuum of Sanctions Program. Under Cause No. 1009, the court sentenced Love to the DOC for two years for domestic battery and to the Madison County Jail for 365 days for resisting law enforcement. It ordered that the sentences in Cause No.

1009 be served concurrent with each other and consecutive to the sentence in Cause No. 2556 and that two years of the sentence be executed in the Continuum of Sanctions Program.

[5] On July 27, 2020, the State filed a Petition to Terminate Continuum of Sanctions Privilege under Cause Nos. 2556 and 1009 and alleged that Love committed multiple violations of the Continuum of Sanctions Program including failing to maintain contact with staff on July 14 and 20, 2020, and failing to attend scheduled appointments on July 17 and 23, 2020. The State also alleged that Love's whereabouts were unknown as of July 23, 2020, and that he owed arrears to Madison County Community Justice Center.

[6] On March 5, 2021, the court held an evidentiary hearing. Samantha Miles, the Program Assistant for Home Detention through the Madison County Community Justice Center, testified that Love began the Continuum of Sanctions Program on May 22, 2020. She indicated Love was not placed on home detention that day because Love informed the Continuum of Sanctions Program Board that "he was living with his niece and he was unsure if she would allow home detention . . . to be at her home in doing home detention." Transcript Volume II at 17. She stated that Love missed an appointment on May 29, 2020. Miles testified that she discovered there was a warrant for Love in Henry County. The court admitted certified copies of documents related to a Henry County case that indicated the State had charged Love with Count I, driving while suspended as a class A misdemeanor; Count II, operating a motor vehicle with a false plate as a class C infraction; and Count III, operating with

expired plates as a class C infraction. The admitted records indicated that Love failed to appear on May 6 and 26, 2020, and a bench warrant was issued.

[7] Miles testified that, at a meeting with Love, she told him about the Henry County warrant and informed him that he needed to contact her after leaving the Henry County hearing, Love indicated to her that he understood, and she informed him he had a meeting scheduled for July 17, 2020. She further testified that at another face-to-face meeting with Love, he stated he understood that he needed to report back to her and that he had another meeting scheduled for July 17, 2020, but he failed to appear for that meeting. Miles stated that Love eventually stopped reporting and she made several attempts to reach him. When asked if Love reached out to her "[a]t any point and time between July 9th, or July 17th, or even July 23rd before [she] filed the violation," she answered in the negative. *Id.* at 22. She indicated that the difficulty contacting Love had been an issue since he started the Continuum of Sanctions Program in May of 2020. On cross-examination, Miles indicated that Love reported to the Continuum of Sanctions Program in May and "he was originally voted home detention and we gave him some time to try to find, uh, residence to do home detention and due to him not being able to, then he decided to . . . maintain him on . . . Adult Day Reporting." *Id.* at 24.

[8] Love testified that he reported to the Continuum of Sanctions Program, had no place to live, and "was placed on [his] niece's couch which is somewheres [sic] and [he] explained this the moment [he] got there." *Id.* at 29. He indicated he was told to go to New Castle and take care of his other charge and report back.

When asked if it was his testimony that he did not think he had a deadline to return and that he needed to address the Henry County charge first, he answered: "Yeah. (INDISCERNIBLE) The whole world stopped. I'm questioning everybody in this (INDISCERNIBLE) pandemic. The whole world stopped." *Id.* at 33. He later stated: "Phones and stuff break." *Id.* On cross-examination, the prosecutor asked Love where he was "this entire time" if he was not at his niece's house, and he answered: "Social distance." *Id.* at 34. When asked again, he answered: "[S]ocial distancing placed me (laughs)." *Id.* at 35.

[9] Upon questioning by the court, Love indicated that he slept at a house on East 27th Street between July 2020 and February 21, 2021, when he was arrested. When asked who owned the house, he answered: "I had paid rent late on it." *Id.* at 36. Love indicated that the house was about a mile and a half from the Community Justice Center. When asked if he decided he was not going to make the mile and half trip to check in with the Continuum of Sanctions Program during those approximately seven months, Love answered: "Yep." *Id.* He indicated his reason for not going was that his Henry County case was not done. Love indicated that he thought he signed a paper saying he would inform the Continuum of Sanctions Program of any new address and that he failed to do so.

[10] The court found that the State met its burden of proof. Love's counsel argued that Love should be assigned to work release. The court asked Love when he last worked, and he answered: "Worked? Ooh your Honor, um, had to be, um,

I last worked – I'm disabled your Honor. It was 20- had to be. Last point I ever-ever done that between '17, 2018. Somewhere that. June '17 if I'm not mistaken." *Id.* at 46-47. The court stated:

> Well, Mr. Love, . . . that would be my preference. My preference would've placed you at Work Release. Step you up a rung of the ladder. Uh, uh, on the level of sanctions that are available. This is your first offense, . . . but it's not really available cause you're on disability. And so, that puts you in . . . a spot that creates a real problem. You can't work. And, or, well, I'm sorry. Your disability prevents you from working. And kind of the, the essence of Work Release is that you go work. And so, that's a problem. Uh, leaving you in our jail is a problem. Uh, it's overcrowded as it is. And . . . putting you back where you were doesn't seem an option to me because you walked away and if you don't want to be on In-Home and/or COS, or ADR, . . . then you shouldn't have walked away or you should've walked back. One or the other. And so, this is not an ideal solution Mr. Love, but I'm . . . constrained in what my options are.

Id. at 47. The court "revoke[d] that two years of" the Continuum of Sanctions Program to the DOC under Cause No. 2556 and ordered the same sanction under Cause No. 1009. *Id.*

[11] On March 5, 2021, the court entered orders under Cause Nos. 2556 and 1009 finding that Love violated the conditions of the Continuum of Sanctions Program by failing to maintain contact with staff and by failing to attend scheduled appointments. It revoked Love's placement and ordered that he serve two years in the DOC under each cause and also ordered that the

sentence under Cause No. 1009 be served consecutive to the sentence under Cause No. 2556.

[12] On March 17, 2021, Love filed a Motion to Reconsider Sanctions Order. His counsel argued that "[u]pon being informed by [Love] that he does not work and receives Social Security Disability the Court revoked [his] sentence to the [DOC] in lieu of sentencing him to work release," revoking his sentence was unduly harsh and tantamount to punishing him for his disability status, counsel had learned that it was possible for Love to work twenty hours per week and still maintain his eligibility for Social Security Disability, and Love's family indicated he had an opportunity to obtain employment at Goodwill or "Man 4 Man." Appellant's Appendix Volume II at 87. On March 30, 2021, the court denied Love's motion.

Discussion

[13] Love does not challenge the sufficiency of the evidence supporting the revocation. Rather, he asserts the trial court abused its discretion by allowing the sanction of revocation and placement in the DOC to stand after he informed the court that the option of work release was available to him because he could work up to twenty hours and still retain his disability benefits. He asserts that the "one strike and out philosophy is overly punitive and does nothing to give the offenders the assistance and motivation they need to reintegrate into society." Appellant's Brief at 9.

[14] Love asserts that his March 17, 2021 motion was a motion to correct error, and the State does not disagree. We have previously treated a motion to reconsider made after final judgment as a motion to correct error. *See Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998) (nothing that, despite being captioned a "Motion to Reconsider," the motion was made after the trial court entered final judgment and should have been treated as a motion to correct error). Generally, we review a trial court's denial of a motion to correct error for an abuse of discretion. *Booher v. State*, 773 N.E.2d 814, 817 (Ind. 2002). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *James v. State*, 872 N.E.2d 669, 671 (Ind. Ct. App. 2007).

[15] We treat a hearing on a petition to revoke 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), *reh'g denied*. We consider the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *Id.* at 551. If there is substantial evidence of probative value to support the trial court's conclusion, we will affirm its decision. *Id.* Placement in community corrections is at the sole discretion of the trial court. *Toomey v. State*, 887 N.E.2d 122, 124 (Ind. Ct. App. 2008). A defendant's placement there is a matter of grace and a conditional liberty that is a favor, not a right. *Id.*

[16] The record reveals the trial court initially sentenced Love to an executed sentence in the Continuum of Sanctions Program. Love committed multiple violations of the Program including failing to maintain contact with staff and failing to attend scheduled appointments. The court asked Love when he last worked, and Love indicated that he was disabled and that his most recent employment had been in June 2017. We conclude that substantial evidence of probative value supports the trial court's decision.

[17] For the foregoing reasons, we affirm the trial court's order.

[18] Affirmed.

Najam, J., and Riley, J., concur.