

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Eric D. Nicholson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

July 29, 2022

Court of Appeals Case No.  
22A-CR-308

Appeal from the Allen Superior  
Court

The Honorable Samuel R. Keirns,  
Magistrate

Trial Court Cause Nos.  
02D04-2007-F6-819  
02D04-2011-F6-1385

**Tavitas, Judge.**

## Case Summary

- [1] Eric Nicholson appeals the trial court's order revoking his placement in the Allen County Community Corrections Residential Services Center. Nicholson claims that the State failed to prove by a preponderance of the evidence that Nicholson violated the terms of his placement. Because we conclude otherwise, we affirm.

## Facts

- [2] On July 7, 2020, the State charged Nicholson in Cause No. 02D04-2007-F6-819 ("Cause No. F6-819") with possession of cocaine, a Level 6 felony, and intimidation, a Level 6 felony. Before that case was resolved, the State charged Nicholson on November 6, 2020, in Cause No. 02D04-2011-F6-1385 ("Cause No. F6-1385") with possession of methamphetamine, a Level 6 felony, and criminal trespass, a Class A misdemeanor.
- [3] On November 24, 2020, Nicholson entered into a plea agreement with the State to resolve both cases. In Cause No. F6-819, Nicholson agreed to plead guilty to possession of cocaine, a Level 6 felony, and to a sentence of two and one-half years, with 183 days executed and two years suspended to probation. He also agreed to plead guilty in that cause to intimidation, a Level 6 felony, and to a consecutive one-year suspended sentence. In Cause No. F6-1385, Nicholson agreed to plead guilty to possession of methamphetamine, a Level 6 felony, and a sentence of two and one-half years, all suspended, with one year to be served

on probation. The trial court accepted the plea agreement and sentenced Nicholson pursuant thereto on December 18, 2020.

[4] On June 3, 2021, the State filed a petition to revoke Nicholson's probation and alleged that Nicholson failed to report to probation as directed and that the probation department was unable to locate Nicholson. Nicholson admitted to the violations on July 27, 2021, and the trial court returned him to probation with "zero tolerance" for future violations. Appellant's App. Vol. II pp. 142, 143.

[5] A mere ten days later, on August 6, 2021, the State filed another petition to revoke Nicholson's probation and alleged that Nicholson had a positive drug screen and failed to report to probation. The State later amended the petition to add an allegation that Nicholson had committed two new criminal offenses: criminal trespass and battery, Class A misdemeanors. Nicholson again admitted to the violations, and, on September 30, 2021, the trial court revoked his probation and ordered him to serve five and one-half years of his previously-suspended sentence in the Allen County Community Corrections Residential Services Center ("the Center") with electronic monitoring.

[6] Nicholson was released to the Center on October 6, 2021. By November 17, 2021, the Community Corrections Department filed a report indicating that Nicholson had been sanctioned eight times for rules violations and been involved in five incident reports. On December 1, 2021, the State filed a petition to revoke Nicholson's placement and alleged that he: (1) failed to

complete a community service sanction; (2) cursed at community corrections staff; (3) possessed contraband in the form of a loose razor blade and tobacco; and (4) failed to pay fees.

[7] A hearing was held on the petition to revoke on January 18, 2022. The State called one witness: Nicholson's case manager, Johnny Cannon. Cannon testified that he reviewed the community corrections handbook with Nicholson shortly after Nicholson arrived at the Center. Cannon also testified that, in addition to Nicholson's other disciplinary issues, a staff member at the Center found a loose razor blade in Nicholson's locker. When Cannon asked Nicholson about the contraband, Nicholson said that he used the blade to cut hair. Nicholson testified on his own behalf and claimed that he did not know about the loose razor blade and stated: "I never even, never even knew I had a loose razor. Sometimes our razors come apart . . . ." Tr. Vol. II p. 43. Nicholson also claimed that he left his locker unlocked due to frequent searches by staff, implying that others had access to his locker. He also denied ever talking to Cannon about the razor blade.

[8] At the conclusion of the hearing, the trial court found that Nicholson violated the terms of his placement by possessing a loose razor blade. Consequently, the trial court revoked Nicholson's placement and ordered him to serve the balance of his sentence in the Department of Correction. Nicholson now appeals.

## Analysis

- [9] Nicholson claims that the State failed to prove that he violated the terms of his community corrections placement. The standard of review for revocation of a community corrections placement is the same standard as for a probation revocation. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019) (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). That is, a trial court's decision that a violation occurred is reviewed for abuse of discretion. *Id.* (citing *Prewitt v. State*, 878 N.E.2d 184, 185 (Ind. 2007)). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances. *Id.*
- [10] On appeal, we consider only the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of the witnesses. *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010). Because a revocation proceeding is civil in nature, the State need only prove the alleged violation by a preponderance of the evidence. *Id.* at 485. If the trial court determines that a violation has occurred, it then determines whether the violation warrants revocation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). Proof of a single violation is sufficient to permit a revocation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*.
- [11] Nicholson contends that the State failed to prove that he violated the terms of his community corrections placement. He notes that the razor blade found in his locker was not entered into evidence and that Cannon did not speak to Nicholson about the razor blade until a few days after the blade was found.

Nicholson's claims on appeal are essentially a request that we reweigh the evidence and judge witness credibility, which we may not do on appeal.

[12] The evidence favorable to the trial court's decision shows that Nicholson possessed contraband in the form of a loose razor blade. Nicholson admitted to Cannon that he used the blade to cut hair. A reasonable inference can be drawn that Nicholson knew possession of contraband, such as a loose razor blade, was in violation of the rules of the Center. Cannon went over the rules of the Center with Nicholson shortly after Nicholson arrived at the Center.

[13] From this evidence, the trial court could reasonably conclude that the State proved, by a preponderance of the evidence, that Nicholson violated the terms of his placement in the Center. Given Nicholson's lengthy history of probation violations, the trial court was well within its discretion to revoke Nicholson's placement and order him to execute the remainder of his previously-suspended sentence in the DOC.

### **Conclusion**

[14] The State presented evidence sufficient to prove, by a preponderance of the evidence, that Nicholson violated the terms of his community corrections placement. Accordingly, we affirm the judgment of the trial court.

[15] Affirmed.

Riley, J., and May, J., concur.