MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marie Ann Polston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 16, 2023

Court of Appeals Case No. 22A-CR-2621

Appeal from the Marion Superior Court

The Honorable Shelia A. Carlisle, Judge

The Honorable Matthew E. Symons, Magistrate

Trial Court Cause No. 49D29-2202-F5-3393

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Marie Polston appeals the trial court's order revoking her community corrections commitment and probation. She raises one issue for our review: Did the trial court abuse its discretion by revoking Polston's community corrections commitment and probation? Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] Polston pleaded guilty to Level 5 felony domestic battery with a prior conviction of battery or strangulation, Level 6 felony invasion of privacy with a prior conviction, and Class A misdemeanor interference with reporting a crime. The trial court sentenced Polston to an aggregate term of three years for the domestic battery conviction: one year served on home detention through community corrections and two years suspended to probation. The trial court sentenced Polston to concurrent terms of 545 days for invasion of privacy and 365 days for interference with reporting a crime. The trial court entered no-contact orders protecting the victim, Polston's mother, before and after Polston pleaded guilty.

[3] During her intake with Marion County Community Corrections ("MCCC"), Polston watched a video explaining the electronic monitoring rules described in the MCCC contract. Polston signed the contract with an intake officer. The record-keeper at MCCC testified that generally, intake officers explain restricted

areas to their clients.[1] The restricted area here is the area immediately surrounding the home of Polston's mother—a place Polston had lived off and on since 2013. That was also where Polston committed the underlying offenses.

[4] The MCCC contract, in relevant part, instructs Polston to comply with the following:

> 7) MCCC must be able to reach you and you must respond at all times to messages sent through the equipment, by email, phone, or your emergency contact.
>
> * * *
>
> 13) You will not enter, slow down, or stop in areas that the Court has said you cannot be in or around. If your equipment indicates you are in an area the Court has said you cannot be in or around, you must leave immediately.
>
> * * *
>
> 19) You must obey all City, County, State, and Federal laws.

Tr. Ex. Vol. 1 at 3–4 (Exhibit 1). Polston signed her initials next to each numbered statement in the contract. She provided MCCC with a primary

[1] The intake officer who directed Polston's intake process did not testify.

phone number and other numbers where MCCC could reach her, and the intake officer outfitted her with an electronic monitoring device.

[5] The same day, MCCC called Polston twice using her primary phone number to inform her she was passing through an unauthorized location. When Polston did not answer the first call, MCCC left a voice mail. When MCCC called again a couple of hours later for Polston's second entry into the exclusion zone, the agent left a message with a family member or friend who agreed to tell Polston of the unauthorized area.

[6] The next day, Polston left several voice mails with her case manager, using a different phone number from the listed primary number. The case manager called Polston back at that number, informed her he received the messages, and reminded her they had an appointment later that day. At the meeting, the case manager told Polston she could not have any contact with the victim. He asked Polston if she had been in contact with the victim, and Polston said she had not. At the probation revocation hearing, the case manager could not remember if he had spoken with Polston about her being in an unauthorized area the previous day.

[7] The day after Polston met with the case manager, MCCC service and processing specialist Lisa Knopp received an exclusion zone alert for Polston. Knopp called the number Polston had used to communicate with the case manager, which was now listed as Polston's primary number. Knopp identified herself as being with MCCC and asked for Polston by name. The person who

answered the phone said Polston was unavailable. Knopp told the person Knopp needed to speak with Polston because Polston had gone through an area she could not be in, and the person speaking identified herself as Polston. Knopp described the area Polston entered—between English Avenue and Brookville Road around South Arlington Avenue—and "advised her she had gone through the exclusion zone[.]" *Tr. Vol. 2* at 64. Knopp then asked Polston if she had permission to be out of her home at the time. Polston told Knopp, and Knopp later confirmed, Polston had a case manager note allowing her to be out of her home. Knopp asked Polston where she was going, and Polston told Knopp she was at her appointment and was busy. Polston then hung up on Knopp.

[8] That evening, Polston's electronic monitoring device signaled to MCCC Polston had returned to the restricted area. MCCC attempted to contact Polston "at all available numbers" and "through [Polston's] monitoring device" but Polston did not respond. *Appellant's App. Vol. 2* at 115. MCCC could not leave Polston a voice mail because her mailbox was full. The location monitoring software showed Polston stayed in the exclusion zone for about twenty-five minutes.

[9] MCCC filed a notice of community corrections violation for Polston's fourth time in the exclusion zone, alleging Polston entered a restricted area and failed to leave. The State filed a notice of probation violation, alleging Polston failed to comply with MCCC placement. The trial court determined Polston committed the violations as alleged, finding "the evidence is credible that the

defendant was provided with the areas of the exclusion zone at her intake appointment"; the area described in Polston's phone call with Knopp is "a pretty specific area . . . not the entire . . . east side of Indianapolis"; and Polston remained in the exclusion zone "for a not insignificant period of time." *Tr. Vol. 2* at 83–84. The trial court revoked Polston's community corrections commitment and probation, ordering her to serve two years in the Indiana Department of Correction. Polston now appeals.

Discussion and Decision

[10] "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). Both programs are alternatives to commitment to the Department of Correction and "are made at the sole discretion of the trial court." *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Further, placement in either program is a "matter of grace" and a "conditional liberty," not a right to which the defendant is entitled. *Id.* (quoting *Million v. State*, 646 N.E.2d 998, 1001 (Ind. Ct. App. 1995)).

[11] Thus, we review a trial court's revocation of a community corrections placement for abuse of discretion. *Bennett*, 119 N.E.3d at 1058. "An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). On review, we consider only the evidence most favorable to the judgment without

reweighing the evidence or judging the credibility of witnesses. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008).

[12] Upon a timely petition to revoke probation, the trial court may revoke a person's probation if. . . the person has violated a condition of probation during the probationary period[.]" Ind. Code § 35-38-2-3(a) (2015). At an evidentiary hearing, the State must "prove the probation violation by a preponderance of the evidence." I.C. § 35-38-2-3(f). If the court finds the person violated a condition of home detention, "the court shall . . . order one (1) or more sanctions as set forth in subsection (h)[.]" I.C. § 35-38-2-3(i).

[13] The MCCC contract Polston signed and initialed stated MCCC must be able to contact Polston and Polston must always respond to messages sent from MCCC. Yet Polston did not answer MCCC's calls three times and hung up on MCCC once. The contract also instructs Polston not to enter, slow down, or stop in areas prohibited by the court, and to leave immediately if her equipment indicates she is in an exclusion zone. Polston entered the exclusion zone four times, and on the fourth time, she remained for twenty-five minutes.

[14] Finally, the MCCC contract directs Polston to obey all city, county, state, and federal laws. Polston had a no-contact order prohibiting her from visiting the location where she knew the victim to be located. Polston was familiar with the location of the victim's residence because she lived there off and on since 2013, and it is where Polston committed the crimes leading to her probation. Polston entered the area near the home four times within two days of home detention.

[15] Polston argues the State failed to prove the trial court excluded Polston from the area at issue. Further, Polston argues no evidence shows she was aware she was subject to an exclusion zone. Yet whether Polston knew she was subject to an exclusion zone is not an element of the violation the State must prove. And Polston knew to avoid the area because Knopp called Polston and described the exclusion zone. Disregarding Knopp's instruction, Polston went back to the exclusion zone later that day and remained there for about twenty-five minutes.

[16] There is evidence from MCCC's record-keeper indicating Polston was informed of the restricted area. To the extent Polston contends she lacked knowledge of any restriction, her argument amounts to a request to reweigh the evidence and reconsider the credibility of a witness, which we cannot do. The trial court did not abuse its discretion in determining Polston violated the conditions of community corrections and probation.

Conclusion

[17] The trial court was within its discretion when it revoked Polston's community corrections commitment and probation. Accordingly, we affirm.

[18] Affirmed.

Robb, J., and Crone, J., concur.