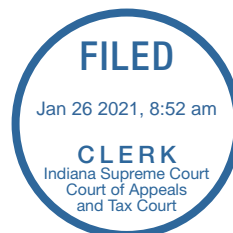


MEMORANDUM DECISION

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

Ryan Showalter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 26, 2021

Court of Appeals Case No.
20A-CR-1399

Appeal from the Marion Superior
Court

The Honorable Barbara Cook
Crawford, Judge

The Honorable Richard E.
Hagenmaier, Magistrate

Trial Court Cause No.
49G21-1811-F5-38142

Najam, Judge.

Statement of the Case

[1] Ryan Showalter appeals the trial court's revocation of his community corrections placement and order for him to serve two years of his previously suspended sentence in the Department of Correction. Showalter raises the following two issues for our review:

1. Whether the trial court abused its discretion when it revoked his community corrections placement.
2. Whether the trial court abused its discretion when it ordered him to serve two years of his three-year sentence in the Department of Correction.

[2] We affirm.

Facts and Procedural History

[3] In August 2019, Showalter pleaded guilty to one count of possession of a narcotic drug, as a Level 5 felony. The trial court accepted Showalter's guilty plea and sentenced him to three years, with two years in community corrections and one year suspended.

[4] In November, the State filed a notice of violation. In that notice, the State alleged that Showalter had committed the new offenses of possession of paraphernalia, a Class A misdemeanor, and possession of methamphetamine, as a Level 6 felony. After a hearing, the trial court released Showalter back to community corrections with the additional condition that he reside at Truth Treatment Center.

- [5] Approximately five days later, the State filed a new notice of violation in which it alleged that Showalter had failed to submit to a drug screen at Truth Treatment Center, which resulted in the termination of his residency there. At the ensuing hearing on that notice, Showalter admitted to the violation, and the trial court again released him to community corrections but with the additional condition that he reside at Volunteers of America.
- [6] A few days later, Showalter left the Volunteers of America facility. Just days after that, the State filed a yet another notice of violation and alleged that Showalter's community corrections monitoring device registered a "Strap Tamper" alert, which indicated that the device was compromised or had been removed from Showalter's person. The device was later found in a gas station trash can.
- [7] At the ensuing violation hearing, Showalter admitted to the violation. In doing so, he asserted that he suffered from a traumatic brain injury and submitted a memorandum from his social worker that established a plan for Showalter to engage in rehabilitative programs and services if allowed to return to community corrections. Showalter also submitted a letter from his mother that he claimed supported that he had diminished mental capacity and functions. Appellant's App. Vol. 2 at 136-42.
- [8] During the trial court's questioning of Showalter about his alleged injury, the trial court stated, "I'[m] not even sure you had a traumatic brain injury[.] I haven'[t] seen any evidence of it other than incidental from you and maybe

your mother[.] I haven't seen any medical records to confirm that." Tr. Vol. 2 at 18. The trial court revoked Showalter's community corrections placement and ordered him to serve two years in the Department of Correction. This appeal ensued.

Discussion and Decision

Standard of Review

- [9] Showalter appeals the trial court's order that modified his placement from community corrections to the Department of Correction. Community corrections programs are alternatives to commitment to the Department of Correction. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Placement in such programs is at the sole discretion of the trial court. *Id.* Furthermore, a defendant is not entitled to these alternatives; rather, such placement is a "matter of grace" and a "favor, not a right." *Id.*
- [10] 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.* 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. *Cox*, 706 N.E.2d at 551. 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.*

Issue One: Revocation of Community Corrections Placement

[11] Showalter first argues that the trial court abused its discretion when it revoked his community corrections placement. Showalter does not dispute that he violated conditions of his placement—indeed, he admitted to the State’s alleged violations. Rather, Showalter asserts that the trial court abused its discretion when it revoked his placement because it did not give significant weight to the evidence of his alleged traumatic brain injury. In other words, Showalter asks us to reweigh the evidence on appeal. We cannot do so. *Cox*, 706 N.E.2d at 551. It was the trial court’s prerogative not to give weight to Showalter’s evidence of his alleged traumatic brain injury, which evidence, notably, did not consist of medical records or the opinions of medical professionals. Thus, we cannot say the trial court abused its discretion when it revoked Showalter’s community corrections placement.

Issue Two: Two-Year Sentence

[12] Showalter next argues that the trial court abused its discretion when it ordered him to serve two years of his previously suspended three-year sentence in the Department of Correction. Specifically, Showalter alleges that the trial court abused its discretion by not imposing a less restrictive sentence because his sentence “deprived him of meaningful treatment” for his alleged traumatic brain injury. Appellant’s Br. 12. But Showalter’s argument is premised on his

earlier argument that the evidence of his alleged traumatic brain injury is entitled to substantial weight, which, again, is simply an improper request for this Court to reweigh the evidence. Therefore, we cannot say the trial court abused its discretion when it ordered Showalter to serve two years of his three-year sentence in the Department of Correction.

[13] Affirmed.

Riley, J., and Crone, J., concur.