

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lacy Baker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 21, 2023

Court of Appeals Case No.
22A-CR-2721

Appeal from the Noble Superior
Court

The Hon. Steven T. Clouse, Judge

Trial Court Cause No.
57D01-1909-F6-307

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] In January of 2022, Lacy Baker pled guilty to Level 6 felony obtaining a controlled substance through fraud or deceit, and the trial court sentenced her to two years of incarceration with 550 days suspended to community corrections. After Baker admitted to violating the terms of her community-corrections placement by using methamphetamine and fentanyl, the trial court revoked her community-corrections placement and ordered that she serve 555 days in jail. Because the trial court did not abuse its discretion in revoking Baker’s community-corrections placement but erroneously ordered her to serve more time than was previously suspended, we affirm in part, reverse in part, and remand with instructions to correct a scrivener’s error.

Facts and Procedural History

- [2] On January 18, 2022, Baker pled guilty to Level 6 felony obtaining a controlled substance through fraud or deceit. In the plea agreement, the State agreed to a sentence of two years of incarceration with 550 days suspended to community corrections, and the trial court sentenced Baker in accordance with this agreement. Baker began her community-corrections, work-release placement on May 20, 2022. Less than one month later, Baker was charged with possession of a narcotic drug as a Level 6 felony, possession of a controlled substance as a Class A misdemeanor, and illegal possession of paraphernalia as a Class A misdemeanor. Noble County Community Corrections (“NCCC”) determined that Baker was no longer eligible for community corrections due to these new criminal charges. Approximately two months later, Baker was

charged with driving while suspended with a prior conviction as a Class A misdemeanor.

- [3] On September 14, 2022, the trial court modified Baker's sentence by requiring her to successfully complete all recommended programs at Noble House. Baker was required to provide a drug screen before starting treatment at Noble House, which was positive for methamphetamine. Baker also admitted to her probation officer that she had used fentanyl on September 10, 2022. As a result, the State filed an additional notice of community-corrections violation. On October 25, 2022, a hearing was held, at which Baker admitted to using fentanyl and methamphetamine during her community-corrections placement. The trial court revoked Baker's 550-day suspended sentence and ordered her to serve 555 days in the Noble County Jail.

Discussion and Decision

I. Community-Corrections Placement Revocation

- [4] Baker contends that the trial court abused its discretion in revoking her community-corrections placement. The standard of review for a direct placement revocation is like that of a probation revocation. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). The trial court determines the conditions of probation and may revoke probation if those conditions are violated. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). A trial court's sanction following a probation revocation is reviewed only for an abuse of discretion. *Id.* An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances. *Id.* We will consider only the evidence most favorable

to the judgment and will not reweigh the evidence or judge the credibility of the witnesses. *Woods v. State*, 892 N.E.2d 637, 639 (Ind. 2008). Evidence of a single violation is sufficient to revoke probation. *Smith v. State*, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000). If the trial court finds that a probationer has violated a condition of probation, it may order execution of all or part of the sentence that was suspended at the time of initial sentencing. *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

[5] The trial court had an ample basis on which to terminate Baker’s community-corrections placement. Less than one month after beginning a community-corrections, work-release program, the State charged Baker with possession of a narcotic drug, possession of a controlled substance, and illegal possession of paraphernalia. Baker was in jail from June 16, 2022, to August 15, 2022. Less than two weeks after being released, the State charged Baker with driving while suspended with a prior conviction. These arrests demonstrate that Baker was not deterred from committing new criminal offenses after having been subject to the police authority of the State. *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (“[A] record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State.”).

[6] On September 7, 2022, Baker reported to NCCC to begin a sentence on home detention with GPS monitoring. Three days later, Baker used fentanyl. Four days after that, the trial court modified Baker’s sentence by ordering her to complete treatment at Noble House. Baker, however, was not admitted at

Noble House because her drug screen was positive for methamphetamine. Despite being given several chances, Baker demonstrated an unwillingness to follow the orders of the trial court or conform her behavior to the rules of law. Baker's repeated violations demonstrate that she cannot refrain from using illicit drugs in a less-restrictive environment, and, therefore, the revocation of her community-corrections placement was warranted.

[7] Baker relies on *Johnson v. State*, 62 N.E.3d 1224, 1231 (Ind. Ct. App. 2016), in support of her assertion that her violations did not warrant revocation of her community-corrections placement. *Johnson*, however, is readily distinguished. In *Johnson*, the defendant violated the terms of his home detention by leaving for approved locations early, making stops at different locations when he had been approved to go to others, and leaving his apartment while staying within the vicinity of the building. *Id.* The defendant also had “well-documented mental limitations[,]” which affected his ability to understand the conditions of his probation and how variations on those conditions were violations of his release. *Id.* at 1228, 1231. The trial court revoked the entirety of the remainder of the defendant's eleven-year, home-detention sentence. *Id.* at 1224–27, 1230. We concluded that the revocation was an abuse of discretion, in part, due to the defendant's impaired mental functioning and the severity of the sentence. *Id.* at 1231.

[8] Here, there is no evidence that Baker is mentally impaired in any way that would affect her ability to understand the terms of her probation, and her suspended sentence is much less severe, at 550 days. Moreover, unlike the

violations in *Johnson*, Baker's were not merely technical. *Id.* at 1231. Technical violations have been described as including such things as missing an undetermined number of appointments with probation. *Brown v. State*, 162 N.E.3d 1179, 1183–84 (Ind. Ct. App. 2021). On the other hand, testing positive for illegal drugs is not a merely technical violation. *See Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019) (concluding that three positive drug screens are “hardly mere ‘technical’ violations” of probation), *trans. denied*. Because it is distinguishable, *Johnson* does not help Baker. We conclude that the trial court did not abuse its discretion in revoking Baker's community-corrections placement and ordering that she serve the balance of her previously-suspended sentence.

II. Scrivener's Error

[9] Baker contends, and the State agrees, that the trial court's revocation order contains an error, the correction of which warrants remand. The abstract of judgment and judgment of conviction for this case provide that Baker was sentenced to two years with 550 days suspended to community corrections. Moreover, the trial court verbally sentenced Baker to two years with 550 days suspended to community corrections. The revocation order, however, indicates that Baker is to serve 555 days in jail. Because the original suspended term of the sentence was only 550 days on community corrections, we remand with instructions to correct the revocation order to reflect that Baker is to serve 550 days in jail.

[10] We affirm in part, reverse in part, and remand with instructions.

May, J., and Mathias, J., concur.