

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gage Patrick Condon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 15, 2023

Court of Appeals Case No.
22A-CR-2147

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No.
71D03-1903-F4-000021

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Gage Patrick Condon appeals following the revocation of his community corrections placement. He raises two issues, which we revise and restate as:

1. Whether the State presented sufficient evidence to support the revocation of Condon's placement; and
2. Whether the trial court abused its discretion when it sanctioned Condon.

We affirm.

Facts and Procedural History

[2] On August 20, 2019, Condon pled guilty to Level 4 felony burglary.¹ The trial court subsequently sentenced Condon to a term of seven years. The trial court ordered Condon to serve five years as a direct placement in community corrections, and the trial court ordered the remaining two years of Condon's sentence be suspended to probation. Condon began serving his sentence at St. Joseph County Community Corrections ("SJCCC"), and he agreed to abide by the rules of that program. Condon also agreed to abide by several terms of probation, including:

¹ Ind. Code § 35-43-2-1.

1. I will not use any controlled substance without a valid prescription or use any illegal substance, nor am I allowed to consume alcoholic beverages while on probation.

2. I will submit to random drug/alcohol testing and pay for same pursuant to the instruction of my probation officer. I understand my failure to submit to a drug screen when ordered by my probation officer as well as submitting a drug drop which urinalysis shows has been diluted or tampered with will be considered a violation of my probation.

* * * * *

10. Violation of any law may be considered a violation of probation. Failure to comply with the *Terms of Probation* may result in the revocation of probation and imposition of part or all of the suspended sentence. Probation may be revoked, in some circumstances, up to one year after the term has expired.

(App. Vol. II at 67) (emphasis in original).

[3] On January 28, 2020, the State filed a petition to revoke Condon's placement, but the State later withdrew the petition. On July 14, 2020, SJCCC filed a violation report with the trial court,² and the trial court issued a bench warrant for Condon. The trial court subsequently found Condon violated the terms of his placement, but the trial court continued Condon on community corrections. However, the trial court modified Condon's placement to Michiana

² A copy of this violation report is not included in the record.

Community Corrections (“MCC”) because SJCCC declined to continue supervising Condon.

[4] On March 22, 2022, Rebecca Demis, Condon’s community corrections case manager at MCC, administered an oral rapid drug screen on Condon, and the drug screen tested positive for alcohol. Condon then performed a portable breathalyzer test, which tested negative for alcohol. Given the conflicting results, Demis asked Condon “to do a lab confirmation drug screen,” but Condon refused. (Tr. Vol. II at 6.) On April 22, 2022, Officer Anthony Stachowiak of the Mishawaka Police Department responded to a dispatch regarding a possibly armed subject that had just left a convenience store in a red Honda. Officer Stachowiak pulled over a vehicle matching the description provided by dispatch, and he found Condon driving the vehicle. Officer Stachowiak discovered Condon’s driving privileges were suspended, and the State subsequently charged Condon with Class A misdemeanor driving while suspended.³ On April 28, 2022, Condon tested positive for marijuana.

[5] On May 26, 2022, Demis filed a notice with the trial court alleging Condon violated the conditions of his community corrections placement by incurring a new criminal charge for driving while suspended. The notice also alleged Condon refused a drug test, tested positive for marijuana in a subsequent drug test, failed to attend treatment classes, and failed to turn in verifications of

³ Ind. Code § 9-24-19-2.

medical appointments. An addendum to the notice also alleged Condon visited several unauthorized locations on June 1, 2022, after he received permission to leave the facility to obtain a COVID-19 test.

- [6] The trial court held an evidentiary hearing on the State’s petition on July 15, 2022. During the evidentiary hearing, the State submitted Condon’s certified driving record from the Indiana Bureau of Motor Vehicles (“BMV”), which indicated that as of June 29, 2022, Condon’s license status was suspended. Demis testified at the hearing that Condon attended only a couple of the substance abuse treatment classes he was supposed to attend, and he failed to provide MCC with the required verification forms confirming his excused absences from the treatment classes. The trial court found Condon violated the terms of his placement and ordered him to serve the remainder of his sentence incarcerated in the Indiana Department of Correction.

Discussion and Decision

- [7] Condon argues the trial court erred by finding he violated the terms of his placement and by ordering that he serve the remainder of his sentence incarcerated. Our standard of review following a trial court’s decision to revoke placement in community corrections is well-settled:

The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. That is, a revocation of community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence.

We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of community corrections, we will affirm its decision to revoke placement.

McQueen v. State, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007) (internal citations omitted). As our Indiana Supreme Court has explained: “A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999) (quoting *Million v. State*, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995)).

1. Violation Finding

[8] Condon contends the State presented insufficient evidence to prove he violated his probation. When Condon agreed to the terms of probation, he acknowledged the “[v]iolation of any law may be considered a violation of probation.” (App. Vol. II at 67.) On April 22, 2022, Condon was arrested for driving while his privileges were suspended. Condon testified at the evidentiary hearing that he believed his driver's license was no longer suspended, and he placed into evidence a letter from the BMV that stated Condon's driving privileges were suspended from November 20, 2021, through April 20, 2022, because Condon had accumulated more than twenty-eight points in a two-year period.

[9] However, the letter also stated: “Please note this period of suspension does not affect any other current or pending suspension(s) you may have on your driver record.” (Tr. Vol. III at 12.) The State introduced Condon’s certified driving record at the evidentiary hearing, and the record listed Condon’s license status as of June 29, 2022, as suspended. The certified driving record listed a suspension for excessive points, which expired on April 20, 2022, and the certified driving record also listed an active suspension, which began on January 10, 2021, for failing to appear for a driver safety program. Thus, while one suspension for excessive points expired before Condon was arrested, his suspension for failing to appear for a driver safety program was still in effect. Therefore, sufficient evidence supported the trial court’s finding that Condon violated Indiana law by driving with a suspended driver’s license. Condon also violated the conditions of his probation by using marijuana, refusing to submit to a drug screen, and violating the rules of his community corrections placement. Thus, sufficient evidence supported the trial court’s finding that Condon violated the conditions of his placement. *See, e.g., Pierce v. State*, 44 N.E.3d 752, 756 (Ind. Ct. App. 2015) (holding sufficient evidence supported revocation of the defendant’s suspended sentence when he committed criminal offenses while on probation).

2. Sanction

[10] Condon also challenges the trial court’s order that he serve the remainder of his sentence incarcerated. We review a trial court’s imposition of probation violation sanctions for an abuse of discretion. *Jones v. State*, 885 N.E.2d 1286,

1290 (Ind. 2008). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances or when the trial court misinterprets the law[.]” *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013) (internal citation omitted).

[11] Even after being shown grace by the trial court, which allowed Condon to serve his sentence in community corrections, Condon continued to engage in criminal behavior. He used marijuana and drove while his driving privileges were suspended. “[T]he commission of any crime is a consequential probation violation that directly and negatively impacts other people.” *Killebrew v. State*, 165 N.E.3d 578, 582 (Ind. Ct. App. 2021), *trans. denied*. In addition, Condon flouted the rules of community corrections by not submitting to MCC the required forms verifying his presence at various medical appointments and by refusing to submit to a drug test. Therefore, the trial court did not abuse its discretion in ordering Condon to serve the remainder of his sentence incarcerated.⁴ *See, e.g., Overstreet v. State*, 136 N.E.3d 260, 264 (Ind. Ct. App. 2019) (holding trial court did not abuse its discretion in ordering probationer to

⁴ Condon also asserts “his Due Process rights were violated by not being given notice that his probation was being violated, and whether community corrections was a condition of his probation.” (Appellant’s Br. at 4.) However, Condon raises this due process argument for the first time on appeal, and therefore, it is waived. *See Leatherman v. State*, 101 N.E.3d 879, 885 (Ind. Ct. App. 2018) (holding argument first raised on appeal is waived). Waiver notwithstanding, Demis filed a notice with the trial court listing several alleged violations by Condon, and Indiana Code section 35-38-2.6-5 provides that if a defendant violates the terms of his community corrections placement, “the prosecuting attorney may request that the court revoke the placement and commit the person to the county jail or department of correction for the remainder of the person’s sentence.” Thus, Condon was aware of the alleged violations and the potential sanction. *See McCauley v. State*, 22 N.E.3d 743, 748 (Ind. Ct. App. 2014) (holding revocation of home detention and probation did not violate probationer’s due process rights), *reh’g denied, trans. denied*.

serve balance of suspended sentence incarcerated as sanction for probation violations), *trans. denied*.

Conclusion

[12] Sufficient evidence demonstrated Condon violated the conditions of his community corrections placement. Moreover, the trial court did not abuse its discretion in ordering Condon to serve the remainder of his sentence incarcerated. Therefore, we affirm the trial court.

[13] Affirmed.

Mathias, J., and Bradford, J., concur.