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IN THE
COURT OF APPEALS OF INDIANA

Gregory Wayne Puckett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 3, 2022

Court of Appeals Case No.
21A-CR-962

Appeal from the
Harrison Superior Court

The Honorable
Joseph L. Claypool, Judge

Trial Court Cause No.
31D01-1909-F5-776

Molter, Judge.

[1] Gregory Wayne Puckett pleaded guilty to domestic battery, and the trial court imposed a six-year sentence, suspending four years to probation and allowing Puckett to serve two years on home detention through community corrections.

One month later, he failed a drug test and, as a result, a court services officer petitioned to revoke his home detention placement. Puckett moved to dismiss the petition, arguing that under Indiana Code section 35-38-2.6-5, only the community corrections director—not another court services employee—possessed authority to petition for revocation of a home detention placement. The trial court denied the motion to dismiss, revoked Puckett's placement in home detention, and ordered him to serve the rest of his two-year home detention term in the Indiana Department of Correction ("DOC").

[2] On appeal, Puckett argues the trial court ignored the plain language of Indiana Code section 35-38-2.6-5 and should have dismissed the petition to revoke, and, alternatively, claims the trial court's sanction was an abuse of discretion. Because we conclude the trial court did not err in denying Puckett's motion to dismiss and did not abuse its discretion in revoking his two-year home incarceration period, we affirm.

Facts and Procedural History

[3] In November 2020, Puckett pleaded guilty to Level 5 felony domestic battery resulting in injury to a pregnant family member, and the trial court sentenced Pucket to six years in DOC, with four years suspended to probation and two years to be served on home detention through Harrison County Community Corrections. As part of the plea deal, Puckett promised to not have or use controlled substances, but one month after sentencing, he failed a drug test.

[4] In February 2021, a community corrections service officer filed an affidavit alleging that Puckett had failed a drug test and petitioned the trial court to revoke Puckett's home detention placement. At the April 2021 hearing on the petition, Puckett asked the trial court to dismiss the petition because, he argued, Indiana Code section 35-38-2.6-5 allows only the community corrections director to petition to revoke home detention placement, not another community corrections employee like a court services officer. Tr. Vol. II at 32–33. The trial court denied the motion to dismiss, stating, "I'm going to overrule the request to have it be dismissed because he's not the director. He's an agent of the—of the director, and that agent can have that authority." *Id*. at 33. The trial court then found that Puckett used amphetamine and methamphetamine and therefore violated the terms of his probation, granted the petition to revoke the rest of Puckett's two-year placement on home detention, and ordered Puckett to serve the rest of that term in DOC. *Id*. at 37; Appellant's App. Vol. II at 136–37. Puckett now appeals.

Discussion and Decision

I. Motion to Dismiss

[5] Puckett claims the trial court erred by misinterpreting Indiana Code section 35-38-2.6-5 to allow a court services officer who is not the community corrections director to petition the trial court to revoke Puckett's home detention. We review questions of statutory construction de novo. *Kelley v. State*, 11 N.E.3d 973, 977 (Ind. Ct. App. 2014). "In construing statutes, our primary goal is to determine the legislature's intent," and "to ascertain that intent, we must first

look to the statute's language." *D.P. v. State*, 151 N.E.3d 1210, 1216 (Ind. 2020). "If the language is clear and unambiguous, we give effect to its plain and ordinary meaning and cannot resort to judicial construction." *Id.* "However, if a statute admits of more than one interpretation, then it is ambiguous; and we thus resort to rules of statutory interpretation so as to give effect to the legislature's intent." *Suggs v. State*, 51 N.E.3d 1190, 1194 (Ind. 2016). "For example, we read the statute as whole, avoiding excessive reliance on a strict, literal meaning or the selective reading of individual words." *Id.* (quotations omitted). "And we seek to give a practical application of the statute by construing it in a way that favors public convenience and avoids an absurdity, hardship, or injustice." *Id.*

[6] Indiana Code section 35-38-2.6-5 provides:

> (a) If a person who is placed under this chapter violates the terms of the placement, the community corrections director may do any of the following:
>
> (1) Change the terms of the placement.
>
> (2) Continue the placement.
>
> (3) Reassign a person assigned to a specific community corrections program to a different community corrections program.
>
> (4) 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.

> The community corrections director shall notify the court if the director changes the terms of the placement, continues the placement, or reassigns the person to a different program.
>
> (b) If a person who is placed under this chapter violates the terms of the 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.

Id. Puckett claims the plain language of this statute vests authority to petition to revoke home detention only in the community corrections director, not an employee of the agency such as the courts services officer here. Puckett also argues we are compelled to interpret the statute this way because it is a criminal statute, and the Rule of Lenity requires us to construe criminal statutes against the State and to resolve any ambiguities in such a statute in favor of a defendant. *See Cleveland v. State*, 129 N.E.3d 227, 236 (Ind. Ct. App. 2019) (explaining the Rule of Lenity requires "strict construction of criminal statutes against the State with ambiguities resolved in favor of the defendant"), *trans. denied*. We disagree.

[7] First, we read the statute differently. Notably, both subsections (a) and (b) follow the same structure. Each begins by stating it applies to circumstances where an individual violates the terms of placement, and each then provides a menu of options for the relevant official when addressing those circumstances, with subsection (a) governing community corrections directors and subsection (b) governing prosecutors. Community corrections directors have a menu with

more options, but some come with additional obligations. For example, if the director chooses to reassign a person assigned to a specific community corrections program to a different community corrections program, then the director must notify the court. Subsection (b) provides the prosecutor with only one option, which is to 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. In short, the statute informs community corrections directors and prosecutors respectively what their options are for addressing placement violations.

[8] What the statute does *not* do is purport to limit the authority of community corrections directors and prosecutors to act through others. For example, the State points out—and Puckett does not seem to disagree—that nobody would seriously suggest subsection (b) limits revocation requests to prosecutors to the exclusion of deputy prosecutors, even though there is no separate statute authorizing deputy prosecutors to act on behalf of prosecutors for revocation requests. Appellee's Br. at 12 n.2, 13–14. The point of subsection (b) is to identify a tool for prosecutors to address placement violations, not to limit their ability to delegate authority to deputy prosecutors. The same reasoning applies to community corrections directors. The statute gives them tools for addressing placement violations. It does not prohibit them from acting through other court services officers, and the trial court's unchallenged finding here was that the community corrections service officer who filed the petition was acting on behalf of the director. Tr. Vol. II at 33.

[9] Second, we disagree that the Rule of Lenity applies. That rule "is an interpretive canon that penal statutes should be construed strictly." *Garner v. Kempf*, 93 N.E.3d 1091, 1097 (Ind. 2018). But the rule applies only when ambiguity remains after consulting traditional canons of statutory construction. *Shular v. United States*, 140 S. Ct. 779, 787, 206 L. Ed. 2d 81 (2020). "In other words, a court must first employ all of the traditional tools of statutory interpretation, and a court may resort to the rule of lenity only after seizing everything from which aid can be derived." *Id.* at 788 (Kavanaugh, J., concurring) (quotations omitted); *see generally* 26 Ind. Law Encyc. Statutes § 112 ("The rule of strict construction applied to penal or criminal statutes is to be utilized along with the various other rules of construction simply as a means of discerning and making the means of legislative intent effective."). Here, as explained above, there is no such ambiguity.

[10] Because the community corrections director may act through other court services officers to seek a revocation, and the trial court found that the court services officer who filed the petition was acting on behalf of the director, the trial court did not err in denying Puckett's motion to dismiss.

II. Revocation of Community Corrections Placement

[11] Puckett also argues that even if the statute permitted the community corrections service officer to seek revocation, the trial court abused its discretion by granting the petition because that decision reflects too harsh a sanction. *See Johnson v. State*, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016) (discussing similar

standard of review for revocations of community corrections placement and probation and that both are a matter of grace, not right). "An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court." *Johnson v. State*, 62 N.E.3d 1224, 1230 (Ind. Ct. App. 2016). We do not reweigh the evidence or judge the credibility of witnesses when reviewing a trial court's decision to revoke placement in home detention. *Id*.

[12] Puckett contends the trial court's sanction is an abuse of discretion because he "was in substantial compliance with the terms of his home incarceration[,]" noting that he met weekly with Court Services, remained employed during his home incarceration, and paid all fees. Appellant's Br. at 19. But Puckett ignores that he failed a drug test just one month after he was sentenced—after the trial court had earlier warned him that a rules violation would result in incarceration—and he fails to acknowledge his criminal record, which was extensive. Tr. Vol. 2 at 37; Appellant's Conf. App. Vol. II at 99–100. Puckett also overlooks that the trial court exercised some leniency by ordering him to be incarcerated only for the remaining term of his home detention placement, not the four years of his sentence suspended to traditional probation. Under these circumstances, we cannot say the trial court's sanction was an abuse of discretion.

[13] Affirmed.

Robb, J., and Riley, J., concur.