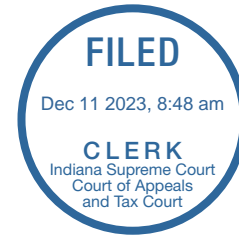


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Keith L. Sanders,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 11, 2023

Court of Appeals Case No.
23A-CR-1083

Appeal from the Lake Superior
Court

The Honorable Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-1612-F3-38

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] Following his release from the Department of Correction (“DOC”), Keith Sanders was admitted into a community transition program and then to a work release program. Sanders had been on work release for three and one-half months when the State petitioned to expel him, alleging several violations of the work release program’s rules. The trial court granted the petition, removing Sanders from work release and returning him to the DOC. Sanders now appeals, arguing there was insufficient evidence he violated the rules. Determining there was sufficient evidence to remove Sanders, we affirm.

Facts and Procedural History

- [2] Sanders pleaded guilty to two counts of armed robbery, both Level 3 felonies. He was sentenced to ten years on each count, with eight served in the DOC and two at Lake County Community Corrections (“LCCC”), served concurrently.
- [3] Sanders began at LCCC, working in a residential work release program. Upon arrival at LCCC, Sanders was notified of the rules and regulations and signed a receipt acknowledging he had heard and understood the rules.
- [4] Sanders began violating rules two months after his arrival at LCCC. His first violation was missing work. The case manager received Sanders’ “clock-in and out reports for the week, and [Sanders] did not go to work . . . but he had left out of [LCCC] at 3:11 p.m. and returned at 6:52 p.m.” *Tr. Vol. 2* at 24. After the case manager “counted travel time into that, . . . his whereabouts were still unknown for about an hour and 41 minutes.” *Id.* As a result, Sanders was

given a GPS monitor. The next day, Sanders received a write-up for being in another resident's room. A few days later, Sanders received a pass to go to the bank. He was given permission to either walk or take the bus to the bank, but Sanders' GPS monitor showed his journey was inconsistent with his pre-approved modes of transportation. Sanders initially lied about getting a ride to the bank but later admitted to the violation. He was written up for "lying or providing false information to a staff member." *Id.* at 23.

[5] A couple of weeks later, Sanders received another write-up for being in another resident's room. The day after, Sanders violated the wardrobe rule by being out of uniform while outside of his room. Sanders claimed he was washing his uniform. However, at the time of the violation, he was in the dayroom, which was out of the way of the laundry room and Sanders' room. Later, Sanders also received a write-up for disorderly conduct for refusing to move out of his doorway for an officer conducting rounds.

[6] The following week, Sanders received a second wardrobe violation for having the curtains in his room closed even though no one was changing clothes or in a state of undress. A few days later, Sanders was found in possession of a vape pen. The director of operations at LCCC, Michael Brickner, conducted a hearing with Sanders. Sanders was warned his next violation would result in his release from the program.

[7] After Sanders' hearing with Brickner, Compliance Supervisor Kojich reviewed video surveillance of the men's restroom and saw Sanders smoking "either a

cigarette or some kind of substance.” *Id.* at 33. Sanders admitted he understood the prohibition on smoking but had “smoked in that bathroom before all the time.” *Id.* at 57. The video was also reviewed by Brickner, who conducted a second hearing. After the hearing, Sanders was transported to Lake County Jail. On the way, he made threats toward Kojich, telling staff to tell Kojich, “You are a straight bitch, and if I see you on the streets, I will do you.” *Id.* at 18.

[8] LCCC filed a petition to expel Sanders the same day, listing approximately fourteen write-ups and various other warnings and sanctions. The petition alleged Sanders had committed disorderly conduct, possessed contraband, engaged in non-conforming behavior, and was behind by \$975 in paying his participant user fee.

[9] The trial court held an evidentiary hearing and granted the petition to expel Sanders from LCCC. The trial court offered Sanders the opportunity to convince LCCC to take him back, but Sanders indicated he wanted to go to the DOC. The court ordered the remainder of Sanders’ sentence served in the DOC. Sanders now appeals.

The Trial Court Did Not Err by Removing Sanders from LCCC

[10] Sanders argues the trial court abused its discretion by revoking his placement at LCCC because there was insufficient evidence to show he violated LCCC’s rules. He claims the State “provided no evidence as to what those rules were.”

Appellant's Br. at 8. Sanders recounts his explanations to the trial court for his non-conforming behavior, possession of contraband, disorderly conduct, and unpaid LCCC fees. He claims the alleged violations, “even if proven, were merely technical violations which should not have warranted his reincarceration.” *Id.* at 11.

[11] We treat a hearing on a petition to revoke a placement in community corrections program the same as a hearing on a petition to revoke probation. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). “Both probation and community corrections programs serve as alternatives to commitment to the [DOC] and both are made at the sole discretion of the trial court.” *Id.* Placement in either program is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Id.* (quoting *Million v. State*, 646 N.E.2d 998, 1001 (Ind. Ct. App. 1995)).

[12] “A [community corrections] hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence.” *Id.* at 551. We review a trial court’s decisions about community corrections violations 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” before it. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). “We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses.” *Cox*, 706 N.E.2d at 551. And we affirm 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].” *Id.*

[13] We disagree with Sanders’ contention that the State presented *no* evidence of what the rules of the program were: The petition to remove him from LCCC included the rule number and description relating to each of his alleged violations, *Appellant’s App. Vol. 2* at 167,¹ and the State presented the receipt of the rules signed by Sanders, *Ex. Vol. 1* at 3. The trial court took judicial notice of the petition at the hearing. And witnesses from LCCC testified regarding Sanders’ rule violations.

[14] This Court has previously found a defendant waived his claim that the State failed to offer the conditions of his probation into evidence when the defendant

¹ The entire portion of the petition relating to the rules is as follows:

- Prohibited Activities Category III: No. 10. Disorderly conduct. Acting in a manner that disrupts or interferes with the functioning and security of the agency or actions that could harm oneself, or other individuals. Also includes creating a situation or environment that could place oneself or other individuals in harm’s way.
 - On 02/02/23, the defendant threatened staff while being transported to the Lake County Jail.
- General Rule No. 50. Not possess or attempt to introduce any contraband into the facility. Contraband is any unauthorized or prohibited item. An item does not have to be deemed illegal by state or federal law to be deemed contraband.
 - On 02/01/23, video surveillance was reviewed and on 1/31/23, the defendant can be seen pulling a lighter out of his pocket and smoking an unknown substance.
- Prohibited Activities Category III: No. 28. Non-Conforming Behavior.
 - On 01/04/23, there was a review of the defendant's violations which shows that he had committed the violation of non-conforming behavior by receiving eight (8) violations in a thirty (30) day period.
- General Rule No. 47 Pay participant user fees:
 - The defendant currently arrears a total of \$975.00

did not object. *See Johnson v. State*, 692 N.E.2d 485, 486–87 (Ind. Ct. App. 1998). In *Johnson*, the defendant failed to assert that the conditions being discussed at the hearing were not the actual conditions of his probation for the relevant convictions. *Id.* At his hearing, Sanders did not object, argue that the rules he allegedly violated were not conditions of LCCC, or claim he was unaware of which rules he violated. Thus, Sanders has waived his claim here. Waiver notwithstanding, the State presented evidence of the rules sufficient for the trial court to find Sanders violated them by a preponderance of the evidence.

[15] For the rest of his claims, Sanders offers the same justifications and alternative explanations for his conduct as he did at his hearing. Sanders essentially invites us to determine his credibility, which is the role of the trial court. Witnesses from LCCC gave ample testimony about Sanders’ conduct. The case manager testified about the time Sanders accepted an unapproved ride to the bank and initially lied to her about it. The case manager also discussed the time Sanders left LCCC on a day he was not working, and his whereabouts were unknown for one hour and forty minutes. The director of operations testified about the video footage showing Sanders smoking in the bathroom. The trial court was well within its discretion to believe the LCCC witnesses rather than Sanders. We decline to accept Sanders’ invitation to reassess his credibility.

[16] Sanders’ violations were not merely technical. The trial court was especially “concerned about the hour and 45 minutes where Community Corrections did not know where . . . Sanders was. He’s not a free man, and [LCCC has] to

know where someone is or that's a liability[.]” *Tr. Vol. 2* at 64. The trial court was “also concerned about the car ride.” *Id.* The court explained, “There’s a reason why you’re not allowed to take a car when you’ve been approved to walk or take a bus. Rides have to be pre-approved. You could be meeting with a drug dealer, for all anybody knows, taking a ride.” *Id.* The trial court considered these two violations “huge.” *Id.* And “the court need find only one violation to support a probation revocation.” *Pitman v. State*, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001), *trans. denied*. Here, there were fourteen community corrections violations—eight of those occurring within a thirty-day period. The trial court even offered Sanders “an opportunity to see if [he] can convince [LCCC] to take [him] back,” but Sanders wanted to go to the DOC instead. *Tr. Vol. 2* at 65. There is sufficient evidence Sanders violated LCCC’s rules, and we discern no error in Sanders’ removal from LCCC.

Conclusion

[17] Determining the trial court did not err by removing Sanders from LCCC, we affirm.

[18] Affirmed.

Altice, C.J., and Weissmann, J., concur.