

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Derrick Darnell Green,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 1, 2024

Court of Appeals Case No.
23A-CR-2331

Appeal from the Lake Superior Court
The Honorable Kathleen A. Sullivan, Magistrate
Trial Court Cause No.
45G04-1907-F3-125

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] Derrick Green pled guilty to Level 5 felony domestic battery resulting in serious bodily injury. In accordance with his plea agreement, Green was serving a four-year sentence, two years of which were to be served in a community-corrections program. While in the community-corrections program, Green violated several of the program's conditions, which resulted in his removal from the program and his placement in the Indiana Department of Correction ("the DOC"). Green claims that the trial court abused its discretion by revoking his community-corrections placement and ordering him to serve his sentence in the DOC. We affirm.

Facts and Procedural History

- [2] In July of 2019, the State charged Green with Level 3 felony aggravated battery, Level 5 felony domestic battery resulting in serious bodily injury, Level 6 felony battery resulting in moderate bodily injury, and Class A misdemeanor domestic battery. In January of 2020, Green and the State entered into a plea agreement, pursuant to which Green agreed to plead guilty to Level 5 felony domestic battery resulting in serious bodily injury. That March, the trial court sentenced Green to four years of incarceration, with the first two years to be served in Lake County Community Corrections and the last two years suspended to probation.

[3] In October of 2021, after the completion of Green’s initial two-year term, the State petitioned the trial court to revoke Green’s probation. The petition alleged that Green had violated various terms of his probation, including testing positive for alcohol, failing to pay fees, and failing to complete a batterer-intervention program and substance-abuse evaluation. The State amended this petition five times, with the fifth amended petition (filed in February of 2023) alleging that Green had been charged with Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class C misdemeanor operating a vehicle while intoxicated, had testified positive for alcohol and illegal substances, and had failed to pay fees.

[4] In April of 2023, the trial court conducted a hearing on the fifth amended petition. After that hearing, the trial court revoked Green’s probation and ordered that he serve two years in the Lake County Jail with placement in Lake County Community Corrections. On May 2, 2023, Green began his Lake County Community Corrections work-release program.

[5] In June of 2023, Lake County Community Corrections staff received a tip that a resident had been seen vomiting at a bus stop near the facility. Custody Officer Iffland responded to the scene and noticed that Green was exhibiting several indicia of intoxication, including “[s]lurred speech, blurry eyes, [and] he had vomited.” Tr. Vol. II p. 27. As Green was transported to the hospital, Officer Iffland discovered “a partially rolled cigarette” that had been lying next to Green. Tr. Vol. II pp. 28–29. A field test revealed that the cigarette contained synthetic marijuana. The next day, Lake County Community Corrections

conducted an administrative hearing, during which Green admitted to having smoked synthetic marijuana the day before.

- [6] The State petitioned the trial court to expel Green from the community-corrections program. The petition alleged that Green had violated the program's rules by being in possession of an illegal substance and using a substance not authorized by a medical professional. On August 31, 2023, the trial court held an evidentiary hearing on the petition to expel. At the hearing, Green's case manager, Darlene Montez, testified that Green had begun his work-release program in May of 2023 and had tested positive for alcohol just two weeks later. Montez also testified that she did not believe Green was a good fit for community corrections. Lake County Community Corrections Director of Operations, Michael Brickner, testified to the June of 2023 incident.
- [7] Green also testified at the expulsion hearing. During his testimony, Green admitted that he had tested positive for alcohol and that he knew consuming alcohol was against the program's rules. Moreover, Green testified that he had admitted that he had smoked synthetic marijuana only because he had felt that doing so would allow him to remain in community corrections.
- [8] Following the presentation of the evidence, the trial court stated that it agreed with the State that Green was not a good candidate for community corrections. The trial court granted the State's petition to expel Green from the community-corrections program and ordered Green to serve two years in the DOC.

Discussion and Decision

- [9] Placement in community corrections is a matter of grace entrusted to the trial court's discretion—not a right to which a criminal defendant is entitled. *Toomey v. State*, 887 N.E.2d 122, 124 (Ind. Ct. App. 2008). We review a trial court's decision revoking a community-corrections placement for an abuse of discretion. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). We consider the evidence in the light most favorable to the judgment and will not reweigh the evidence or judge witness credibility. *Id.* A community-corrections revocation issue is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Id.* at 551.
- [10] Green argues that the trial court abused its discretion when it effectively abrogated its decision in favor of the community-corrections program's recommendation. We disagree. "Although the community corrections director can recommend revocation of placement, it remains the trial court's duty to determine whether revocation will be ordered." *Morgan v. State*, 87 N.E.3d 506, 510 (Ind. Ct. App. 2017), *trans. denied*. Here, we conclude that the trial court did not abrogate its duty in deciding whether it should revoke Green's community-corrections placement.
- [11] At the revocation hearing, the trial court noted that Green had admitted to drinking alcohol in violation of program rules and to smoking synthetic marijuana. The trial court expressed its agreement with the State that the evidence "doesn't really suggest that [Green is] a good candidate for" a

community-corrections program. Tr. Vol. II p. 45. At that point, the trial court granted the revocation petition. After this, the trial court asked Brickner and Montez whether Green should be returned to community corrections. Brickner did not object, but noted that it would be Green’s “last opportunity[,]” while Montez objected to Green’s return to the program. Tr. Vol. II p. 46. We cannot say that the trial court abrogated its discretion in favor of the community-correction staff’s when the staff’s recommendation was not unanimous. Moreover, the record contains no indication that the trial court believed that it had to follow Montez’s recommendation. *See Hosapple v. State*, 148 N.E.3d 1035, 1038 (Ind. Ct. App. 2020) (concluding that the trial court abrogated its discretion in a placement-revocation hearing when it stated that it had “no discretion whatsoever” but to impose the sentence proposed in the defendant’s plea agreement). Green has failed to establish that the trial court abused its discretion in ordering him to serve his two-year sentence in the DOC.

[12] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

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