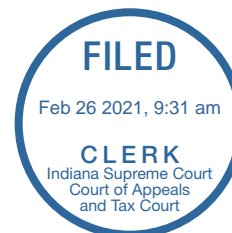


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Dominique L. Morton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 26, 2021
Court of Appeals Case No.
20A-CR-1498

Appeal from the
Steuben Circuit Court

The Honorable
Allen N. Wheat, Judge

Trial Court Cause Nos.
76C01-1608-F5-531
76C01-1809-F6-699
76C01-1811-F6-828
76C01-1811-CM-831

Vaidik, Judge.

Case Summary

- [1] Dominique L. Morton appeals the trial court’s order revoking his placement in community corrections and requiring him to serve the remainder of his sentence in jail or the Department of Correction. We reverse and remand.

Facts and Procedural History

- [2] In July 2019, Morton was sentenced to a total of five-and-a-half-years on community corrections in four separate cases: No. 76C01-1608-F5-531 (Level 5 felony child exploitation); No. 76C01-1809-F6-699 (Level 6 felony failure to register as a sex offender); No. 76C01-1811-F6-828 (Level 6 felony failure to register as a sex offender); and No. 76C01-1811-CM-831 (Class A misdemeanor criminal trespass). In May and June of 2020, a community-corrections case manager filed motions asking the trial court to revoke Morton’s placement, alleging he (1) had contact with Erica Book, who was on probation, (2) was behind on community-corrections fees, and (3) had been charged with a new criminal offense, Class A misdemeanor driving while suspended. After a hearing in July 2020, the trial court found all the allegations to be true, revoked Morton’s community-corrections placement, and ordered him to serve his remaining time—just over four years—in the Steuben County Jail or the DOC.
- [3] Morton now appeals.

Discussion and Decision

- [4] Morton contends the trial court erred by revoking his community-corrections placement and requiring him to serve the remainder of his sentences in jail or the DOC. We review a trial court’s decision to revoke a community-corrections placement for an abuse of discretion. *Morgan v. State*, 87 N.E.3d 506, 510-11 (Ind. Ct. App. 2017), *trans. denied*.
- [5] Morton’s argument is twofold. First, he asserts that merely being **charged** with the new offense of Class A misdemeanor driving while suspended—as opposed to being found to have **committed** that offense—cannot be the basis for revoking a community-corrections placement. Second, he argues his other two violations—having contact with a person on probation and falling behind on his community-corrections fees—are insufficient to support the revocation of his placement.
- [6] The State agrees with Morton on the first issue, and so do we. We have held that probation—which is treated like community corrections for purposes of appellate review, *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*—cannot be revoked based only on the filing of a new charge. *Jackson v. State*, 6 N.E.3d 1040, 1042 (Ind. Ct. App. 2014); *Martin v. State*, 813 N.E.2d 388, 390-91 (Ind. Ct. App. 2004).¹

¹ The State tells us it dismissed the new driving-while-suspended charge in October 2020.

[7] That leaves the fees and Morton's contact with probationer Erica Book. The fee arrearage was minimal. By the time of the revocation hearing, Morton was behind only \$69 on his community-corrections fees. The contact with Book is more troubling. One rule of Morton's community-corrections placement provided, "You shall only associate with law-abiding persons in good standing with the law, who do not have any pending cases, and are not under any supervision including but not limited to; Prison, Jail, Work Release, Community Corrections, Parole, Probation." Appellant's App. Vol. II p. 191. Book worked at Morton's high school when Morton was a student and later became his friend. She was convicted of misdemeanor operating while intoxicated in September 2019 and was on probation when, on April 25, 2020, Morton drove to her neighborhood in his work truck and picked her up. In addition to the rule prohibiting such contact, Morton's case manager had told him five separate times before April 25 not to have any contact with Book. Furthermore, the seventeen-year-old stepsister of one of Morton's friends testified at the revocation hearing Morton had contacted her and asked her to lie and say it was her, not Book, whom Morton had picked up on April 25.

[8] While these rule violations and the surrounding circumstances were certainly sufficient to support some revocation of Morton's community-corrections placement, they were not so serious as to justify a total revocation, requiring Morton to serve more than four years in jail or the DOC. Therefore, we remand this matter to the trial court with instructions to order Morton to serve two years in jail or the DOC, with credit for time already served, after which

Morton will be returned to community corrections to serve his remaining time. *See Johnson v. State*, 62 N.E.3d 1224, 1231 (Ind. Ct. App. 2016) (holding that defendant's violations supported revocation of some, but not all, of his community-corrections placement).

[9] Reversed and remanded.

Brown, J., and Pyle, J., concur.