

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Charles B. Summers,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

March 2, 2023

Court of Appeals Case No.  
22A-CR-2125

Appeal from the Marion Superior  
Court

The Honorable James Osborn,  
Judge  
The Honorable Ross Anderson,  
Magistrate

Trial Court Cause No.  
49D21-2106-F4-17929

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

- [1] Charles B. Summers appeals his placement in the Department of Correction (“DOC”) following the revocation of his community corrections placement and probation. We affirm.

## Facts and Procedural History

- [2] On June 8, 2021, Summers stole tools from the owner of the “halfway house for recovering alcoholics and drug addicts.” (App. Vol. II at 27.) Based thereon, the State charged Summers with Level 4 felony burglary<sup>1</sup> and Class A misdemeanor theft.<sup>2</sup> On December 2, 2021, Summers entered into a plea agreement wherein he agreed to plead guilty to Level 4 felony burglary. Under the agreement he would be sentenced to six years, with four years executed in community corrections and two years on probation. In return, the State agreed to request dismissal of the theft charge, not argue for a longer sentence, and not file a request for a habitual offender enhancement.
- [3] On February 7, 2022, the trial court accepted the plea agreement and sentenced Summers to six years on home detention through Marion County Community Corrections (“MCCC”) with two of those years suspended to probation. As part of his probation, Summers was required to, among other things, “report to

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<sup>1</sup> Ind. Code § 35-43-2-1(1).

<sup>2</sup> Ind. Code § 35-43-4-2(a).

Probation as directed and communicate truthfully with the Probation Department[,]” and wear a monitoring ankle bracelet. (*Id.* at 113.) The conditions of his home detention indicated he could be charged with escape if he violated the home detention order. The conditions of his probation also prohibited him from committing any crimes while on probation, and the trial court ordered Summers to complete substance abuse treatment as part of his home detention.

[4] Three days later, MCCC filed a notice of community corrections violation alleging Summers’s ankle bracelet “went into ‘Strap Tamper’ status.” (*Id.* at 117.) MCCC Officer William Beck testified, “[a] strap tamper alert is indicating – it’ll – it’s an indication to the case manager or whoever’s monitoring that the device is being tampered with or has been removed from their person.” (Tr. Vol. II at 32.) MCCC Officer Robin Whitley attempted to contact Summers regarding the alert, but she was unable to contact him through the numbers Summers provided to MCCC. The ankle bracelet was later located near a dumpster. The strap on the ankle bracelet had been cut.

[5] The trial court issued an arrest warrant for Summers that same day. Officers apprehended Summers two months later after police received a call regarding Summers’s whereabouts. On April 11, 2022, the Probation Department filed a notice of probation violation alleging Summers failed to comply with the terms of his MCCC placement and failed to report to the Probation Department as required.

[6] After a series of continuances, the trial court held a contested hearing regarding the MCCC and probation violations. The trial court heard testimony from MCCC Officer Beck; Michael Robinson, a field officer responsible for monitoring the ankle bracelet; and Summers. The trial court found Summers violated his community corrections home detention and probation by removing his ankle bracelet and by failing to abide by the terms of his probation. Based thereon, the trial court revoked Summers's probation and ordered Summers to serve five years in the DOC.

## Discussion and Decision

[7] The trial court revoked both Summers's placement in MCCC and his probation. "The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation." *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). "Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his [or her] behavior in lieu of imprisonment." *Carswell v. State*, 721 N.E.2d 1255, 1258 (Ind. Ct. App. 1999). It "is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). The trial court has discretion to set the conditions of probation and "to revoke probation if the conditions are violated." *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). Revocation of probation is a two-step process. *Id.* The court must first determine whether a violation occurred. *Id.* If the trial court finds the defendant violated the

conditions of probation, the trial court may continue the probation, extend the term of probation, or “[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(h).

[8] Summers argues the trial court abused its discretion when it ordered him to serve five years of his sentence in the DOC because he needs substance abuse treatment and the trial court’s placement will not allow him to receive that treatment. Summers was ordered to participate in substance abuse treatment program as part of his home detention, but he failed to take advantage of that opportunity. Additionally, as the State notes, DOC is required to “assist a committed offender who has . . . addictive disorder in securing treatment through a Medicaid program[,]” Ind. Code § 11-10-12-5.7(a), and thus Summers might receive substance abuse treatment while placed in the DOC.

[9] Further, other information in the record supports Summers’s placement in the DOC. According to the pre-sentencing report prepared for Summers’s sentencing in February 2022, Summers has four felony and five misdemeanor convictions. Summers has been placed on probation seven times, and six of those ended in revocation. Finally, Summers’s behavior prompting this most recent revocation suggests a disregard for the requirements of placement outside of the DOC. Summers removed his ankle bracelet a mere three days after placement on home detention, and he could not be located for two months thereafter. Based thereon, we conclude the trial court did not abuse its discretion when it ordered Summers to serve five years in the DOC. *See, e.g., Cox v. State*, 850 N.E.2d 485, 491 (Ind. Ct. App. 2006) (trial court did not abuse

its discretion in ordering defendant to serve six suspended years incarcerated after defendant violated probation).

## Conclusion

[10] The trial court did not abuse its discretion when it ordered Summers to serve five years of his sentence incarcerated at the DOC because Summers had been historically unsuccessful in serving sentences outside the DOC, he removed his ankle bracelet three days after the trial court sentenced him to home detention, and he evaded arrest for two months. Accordingly, we affirm.

[11] Affirmed.

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