

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

Robert L. Bealmear,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 19, 2022

Court of Appeals Case No.
22A-CR-62

Appeal from the Vermillion Circuit
Court

The Honorable Jill Wesch, Judge

Trial Court Cause No.
83C01-1810-F2-000005

May, Judge.

[1] Robert L. Bealmear appeals his sentencing for two counts of Level 3 felony criminal confinement.¹ Bealmear argues he was denied due process when the trial court revoked his participation in a pre-sentencing mental health deferral program and imposed a sentence. We affirm.

Facts and Procedural History

[2] On October 22, 2018, under Cause Number 83C01-1810-F2-5, the State charged Bealmear with one count of Level 2 felony burglary² and two counts of Level 3 felony criminal confinement based on an incident that occurred at the home of Bealmear's grandparents. On November 10, 2020, the parties reached a "Conditional Plea Agreement and Mental Health Deferral Agreement." (Appellant's App. Vol. 2 at 33.) The Agreement provided the State would dismiss the Level 2 felony burglary charge in exchange for Bealmear entering pleas of guilty to the two counts of Level 3 felony criminal confinement. In addition, the parties agreed in relevant part:

1. As to each Count, the Defendant shall receive the advisory sentence of six (6) years (2,190 days.) [sic] The terms and conditions of the Defendant's sentence, including what portion, if any, shall be executed, and including whether or not the same shall be concurrent or consecutive, shall be left to the discretion of the Court. The parties would acknowledge that the Defendant served forth[sic]-seven (47) actual days in this Cause, by his

¹ Ind. Code § 35-42-3-3.

² Ind. Code § 35-43-2-1.

incarceration on October 21, 2018, through and including December 6, 2018. The Defendant is entitled to good time credit.

2. The parties have agreed that this matter shall be set for a Sentencing Hearing [in April 2024, and] Defendant expressly waives his right to be sentenced within thirty (30) days.

3. Between the date of this Agreement and the Sentencing Date, the Defendant shall comply with the terms and conditions:

(a.) The Defendant shall behave well and not violate any laws.

(b.) The Defendant shall cooperate with his mental health treatment providers and/or counseling providers and take all medications which are prescribed by his health care providers.

(c.) 4th Amendment Waiver: While this matter is pending, the Defendant agrees to waive his constitutional rights under the Fourth Amendment to the United States Constitution and Article 1, § 11 of the Indiana Constitution. . . .

(d.) While this matter is pending, the Defendant shall not own, possess, or reside in any residence where there are guns of any kind whatsoever.

(e.) The Defendant shall reside at his family's residence Except in the case of an emergency, the Defendant shall not change his residency without prior approval of the Court. The current phone number for the Defendant is Any change in this contact number must be reported to the Court.

(f.) At the present time, the Defendant has the following health care providers: [redacted]. The Defendant shall sign the necessary Consents to Release Information for each of the above-named health care providers, so that, if requested, information regarding the Defendant's diagnosis, prognosis and treatment may be provided to the Vermillion County Prosecutor's Office and/or the Vermillion Circuit Court.

(g.) At the present time, a copy of the Defendant's medication has been provided to the Vermillion County Prosecutor's Office. If there is any modification to the Defendant's medications, then that change shall be reported to the Vermillion County Prosecutor's Office and/or the Vermillion Circuit Court.

* * * * *

4. By his signature on this document, the Defendant acknowledges that he understands that if he were to violate any of the terms and conditions as set forth in this agreement, prior to the scheduled sentencing date, then the State of Indiana would request that this matter be set for an expedited Sentencing Hearing, and then the Court would impose sentence; and the maximum sentence which the Court could impose would be a 4,380-day sentence, (12 years) any portion of which could be executed.

5. In the event that the Defendant successfully completes this period of time, with no violations of the terms and conditions set forth in this Agreement, then at the Sentencing Hearing, it would be the intent of the State of Indiana to allow the Defendant to vacate his guilty plea as to Count #2 and Count #3, and allow him to enter a plea of guilty to Count #4 and Count #5, allegations of Criminal Recklessness, Level #^[sic]6 Felonies.

The Defendant would then be placed on informal probation for a period of two (2) years.

(*Id.* at 33-35) (emphases removed).

[3] On May 11, 2021, the State filed a “Motion for Expedited Sentencing Date” that alleged Bealmear had violated his conditional plea agreement by not behaving well and by violating laws. (*Id.* at 41.) During that hearing, Vermillion County Deputy Sheriff Chad Hennis testified he was familiar with Bealmear because he was the officer who responded to the scene in 2018 when Bealmear confined his grandparents in their home. In addition, Deputy Harris testified to being one of the officers who followed Bealmear on a high-speed chase through Vermillion County and into Illinois, for which Bealmear had been charged with additional crimes under Cause No. 83C01-2105-F6-66 (“F6-66”). The State asked the trial court to take judicial notice of the new criminal case, and defense counsel had no objection to the court taking such notice. Nor did defense counsel object to the court taking notice of the presentence investigation report. Thereafter, Bealmear testified in his own defense and presented testimony from his grandmother. The trial court imposed the six-year sentences called for by the Agreement, ordered the sentences served concurrently, recommended treatment while imprisoned, and indicated the court “will consider a modification to this sentence” if Bealmear completes the Department of Correction’s recommended substance abuse program. (*Id.* at 82.)

Discussion and Decision

[4] Bealmear asserts he was denied due process when his participation in a pre-sentencing mental health diversion program was revoked. A hearing to determine whether a defendant has violated the conditions of his plea agreement is akin to a probation revocation hearing. *Debro v. State*, 821 N.E.2d 367, 374 (Ind. 2005). The full array of constitutional rights afforded to defendants at criminal trials are not afforded to probationers. *Id.* Nevertheless, the Due Process Clause of the Fourteenth Amendment does place procedural and substantive limits on the revocation of conditional liberties afforded to probationers. *Id.* In this context, the rights include “written notice of the claimed violations, disclosure of the evidence against him, an opportunity to be heard and present evidence, the right to confront and cross-examine adverse witnesses, and a neutral and detached hearing body.” *Id.* at 375 (quoting *Isaac v. State*, 605 N.E.2d 144, 148 (Ind. 1992)).

[5] Bealmear argues the trial court needed to make an independent finding, by a preponderance of the evidence, that Bealmear committed the crimes alleged in F6-66, rather than just take judicial notice of the filing of those charges and the finding by the criminal court of probable cause. In support he cites *C.B. v. State*, 988 N.E.2d 379, 381 (Ind. Ct. App. 2013), which held:

[B]efore a juvenile court can determine that a conditional admission agreement has failed based upon probable cause that a new offense has been committed, the juvenile court must independently find probable cause instead of merely relying on the probable cause finding that authorized the filing of the [new]

delinquency petition. Additionally, a juvenile must be given a meaningful opportunity to challenge the existence of probable cause.

However, the procedure that occurred herein is nothing like what happened in *C.B.*, where no testimony was presented and the juvenile court revoked a conditional agreement based on the filing of a new delinquency petition.

[6] Herein, while the State asked the trial court to take judicial notice of the filing of charges against Bealmear in F6-66, the State first presented Deputy Hennis to testify about the high-speed chase that Bealmear led police on from Vermillion County into Illinois, where Bealmear crashed his car, fled on foot, and was apprehended. Deputy Hennis testified that he knew Bealmear because he had been the responding officer when Bealmear's grandparents had called 911 and that he talked to Bealmear when he was apprehended by police after the high-speed chase. Bealmear had the opportunity to cross-examine Deputy Hennis and to present evidence to rebut Deputy Hennis's account. Given the State presented testimony of Bealmear's new crimes at the hearing, *C.B.* is not on point.

[7] Moreover, when Bealmear took the stand, he testified that, in the ten months after his conditional plea, he had used "[m]ostly marijuana but occasionally I would use methamphetamine." (Tr. Vol. 2 at 70.) He also admitted he was getting the methamphetamine "from the streets." (*Id.*) Finally, he acknowledged his doctor had been urging him to stop using methamphetamine because it could cause psychosis, which would negatively impact Bealmear's

mental health diagnoses. Bealmear's testimony alone indicated he had been violating the law and failing to comply with his mental health treatment providers – both of which violated his Agreement. He was not denied due process. *See, e.g., Terrell v. State*, 886 N.E.2d 98, 101 (Ind. Ct. App. 2008) (trial court did not deny Terrell any due process rights when Terrell had admitted probation violations), *trans. denied*.

Conclusion

[8] Bealmear's assertion of a due process violation fails. A police officer who participated in a high-speed chase of Bealmear, for which new charges had been filed, testified to those events and to speaking to Bealmear at the scene when the chase ended. Moreover, Bealmear himself testified he had been using marijuana and methamphetamine, which he was purchasing on the streets and using despite his doctor urging him to stop. Given the obvious and unchallenged nature of the testimony demonstrating Bealmear's violations of the Agreement, we affirm the trial court's revocation of his conditional release and imposition of sentence.

[9] Affirmed.

Riley, J., and Tavitas, J., concur.