



## STATEMENT OF THE CASE

Gregory Harris appeals the trial court's revocation of his placement on home detention.<sup>1</sup> He presents two issues for our review:

1. Whether the State presented sufficient evidence to support the revocation of his placement on home detention.
2. Whether the trial court abused its discretion when it ordered him to serve the remainder of his sentence in the Marion County Jail.

We affirm.

## FACTS AND PROCEDURAL HISTORY

On October 14, 2010, Harris pleaded guilty to invasion of privacy, as a Class D felony. By his plea agreement, Harris agreed to a sentence of 730 days with 267 days suspended to probation, and he agreed to serve the executed portion of his sentence on "home detention with GPS monitoring." Appellant's App. at 30. The terms of the home detention included permission for Harris to leave his residence to go to work during scheduled work hours. Harris could leave the residence for non-work related reasons as long as he obtained permission from his case manager, Johnny Williams, twenty-four hours in advance. Any non-scheduled absence from the residence was not permitted.

On October 28, Harris left his residence without permission. Harris had called and left Williams a voice mail message stating that "he would not be limited in his movement while he's on [home detention]." Transcript at 9. At some point on that date, Williams spoke with Harris on the telephone and reiterated that he was not permitted to leave his

---

<sup>1</sup> Both parties characterize this appeal as one from the revocation of probation. But Harris had just begun to serve the executed portion of his sentence on home detention when he violated the terms of that detention. As we will explain, the same standard of review applies to appeals from the revocation of both probation and home detention.

residence without permission. Then, on October 30, Harris telephoned Williams and asked for permission to leave his residence. Williams denied Harris' request because he had not obtained "24-hour notice" for the requested leave. Id. Despite Williams' denial of permission, Harris left his residence on October 30.

On November 1, the State filed a notice alleging three violations of the terms of Harris' home detention, namely: Harris had left his residence on October 28 without permission; he had left his residence on October 30 without permission; and he had failed to pay monitoring fees. Following a hearing, the trial court found a single violation, namely, that Harris left his residence without permission on October 30. Accordingly, the trial court revoked Harris' home detention and ordered that he serve the remainder of his sentence in the Marion County Jail. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Sufficiency of the Evidence**

For purposes of review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. Holmes v. State, 923 N.E.2d 479, 482 (Ind. Ct. App. 2010). We take this approach because we have determined that the difference between the two is "insignificant." Pavey v. State, 710 N.E.2d 219, 220–21 (Ind. Ct. App. 1999). Both are alternatives to commitment to the IDOC, and both are made at the discretion of the trial court. Holmes, 923 N.E.2d at 482. A placement in either is a "matter of grace" and a "conditional liberty that is a favor, not a right." Id. (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). Accordingly, a community corrections hearing is civil in nature

like a probation hearing, and the State need only prove the alleged violations by a preponderance of the evidence. See Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). We will consider all the evidence most favorable to the trial court’s judgment without reweighing that evidence or judging the credibility of the witnesses. Id. If a person placed in community corrections violates his or her terms of placement, the court may, after a hearing:

- (1) [c]hange the terms of the placement[;]
- (2) [c]ontinue the placement[; or]
- (3) [r]evoke the placement and commit the person to the department of correction for the remainder of the person’s sentence.

Ind. Code § 35-38-2.6-5.

Harris’ sole contention on this issue is that the trial court erred when it admitted into evidence “a printout that shows the GPS zone [around Harris’ residence] and [Harris’] movements during the time period in question.” Transcript at 12. The printout purports to depict an area around Harris’ residence labeled “Client’s Home Zone,” and it also depicts arrows allegedly showing Harris’ movement outside of the “Home Zone” on October 28 and October 30. State’s Exhibit 1. During the hearing on the State’s notice of violation of home detention, Harris objected to the printout as follows: “I would object to that being admitted in, because we have no way of knowing that it is what it represents itself to be or how it was even made.” Id. at 13.

In response to Harris’ objection, the trial court asked Williams to “describe what State’s Exhibit 1 is[.]” Id. Williams testified as follows:

Our—well, I don't have it with me. Our computer generates off the GPS unit. What I have done, where you see it says, "Client's Home Zone," that's where he lives at and I've made a zone around his home. So anytime he leaves without a schedule, I get a note on the BlackBerry that he's gone. And I pull up on the map, as you can see the little arrows, that's actually him walking or driving, whatever he may be doing, out of the zone at the time where I had said that he left. And if you see the arrows inside his zone, that means he's at home.

Id. at 13-14. The trial court admitted the exhibit over Harris' objection.

On appeal, Harris cites to this court's opinions in Carden v. State, 873 N.E.2d 160 (Ind. Ct. App. 2007), and J.J.C. v. State, 792 N.E.2d 85 (Ind. Ct. App. 2003). In each of those cases, we held that the State had not presented sufficient evidence that certain computerized mapping or surveillance systems had substantial indicia of reliability and should have been excluded from evidence. See Carden, 873 N.E.2d at 164; J.J.C., 792 N.E.2d at 88. For instance, in Carden, the State alleged that the defendant had violated his probation by entering within two blocks of a daycare center.

And the only evidence that the State presented on this point was that some unidentified "mapping system" showed that there was some unnamed daycare center within two blocks of that address. No evidence was presented regarding such basic things as the name and manufacturer of the mapping system, how the mapping system works, [and] how often the mapping system is updated . . . . Because [the State's witness's] testimony regarding the mapping system does not have a substantial guarantee of trustworthiness, the trial court erred by admitting it.

Id. at 164.

Likewise, here, the State did not identify the name or manufacturer of the GPS system used to track Harris, and Williams did not provide any technical details regarding how the system works, other than to state that he receives notifications on his BlackBerry when there is a violation. And while Williams explained that the arrows on the printout

show Harris walking or driving outside of the “home zone,” Williams did not describe how the system receives and/or deciphers the signals from the GPS system. We hold that the State did not present evidence showing that the GPS tracking system has a substantial guarantee of trustworthiness, and the trial court abused its discretion when it admitted State’s Exhibit 1 into evidence. See id.

But that does not end our inquiry. The State’s Exhibit 1 was not the only evidence that Harris violated the terms of his home detention on October 30. The trial court expressly concluded that Harris violated the terms of his home detention by leaving his residence without permission on October 30, 2010, “by [his] own testimony that conflicted itself[.]” Transcript at 17. In other words, the trial court found a violation based upon Harris’ testimony.

Williams testified that he had instructed Harris that “he could not leave his home unless he had a schedule.” Id. at 8. And Williams testified that on October 30, Harris telephoned Williams and said “he need[ed] to be out of his house until 6 p.m.” Id. at 9. But Williams told Harris that he was not permitted to leave “because he didn’t give [Williams] a 24-hour notice[.]” Id.

Regarding October 30, Harris testified in relevant part as follows:

Now, however, on the 30th, on the 30th I don’t recall leaving from the—you know, asking if I could leave. I mean, it’s only one time in the evening I asked Mr. Williams if I could leave in the evening time and he gave me permission to do so.

\* \* \*

Q: Okay. So you’re saying that on October 30th you did not leave without permission?

A: I can't—I can't say. I can't say that I did.

Q: You did not leave your home at all that day?

A: I can't say that I did leave without permission, without getting permission. . . .

Id. at 10-11 (emphases added).

We hold that the evidence is sufficient to prove that Harris left his residence without permission on October 30, 2010, and, in so doing, violated the terms of his home detention. Williams testified that Harris requested permission to leave his residence on that date, and that Williams denied that request. And while Harris' testimony is confusing, nonetheless one reasonable interpretation of his testimony is that Harris believed he had permission to leave the residence on that date and did leave. Indeed, the State presented evidence that Harris had previously expressed his intention that "he would not be limited in his movement while he's on the [electronic monitoring system] program." Id. at 9. Again, we must consider the evidence most favorable to the trial court's judgment. See Monroe, 899 N.E.2d at 691. In light of the court's interpretation of Harris' testimony, and the court's express reliance on that testimony, we must conclude that the State presented sufficient evidence to support the revocation of Harris' home detention.

### **Issue Two: Sentence**

Harris next suggests that he was wrongfully denied an opportunity to "explain and mitigate" the violation before the trial court revoked his "probation." Brief of Appellant at 8. And he contends that

without discussing the nature of the violation, [the trial] court sentenced Harris to the remainder of his time in jail. That was the sentence called for had he violated the no contact order. Imposing the same sentence for a ten-minute walk outside his house is so disproportionate as to be an abuse of discretion.

Brief of Appellant at 8 (citation omitted). We cannot agree.

In the course of the hearing, Harris testified, at length, regarding the reasons for having left his residence on occasion, namely:

I would have been headed to the library, and the thing is is [sic] that I work in the real estate industry. I've been so far behind. I've been so far behind with my work and due to there are some other issues here surrounding this case . . . .

\* \* \*

So these times here, there was some crucial moments and I would always inform [Williams], you know, and the thing is is [sic] that not speaking to him directly, yes, I was wrong for that. But, however, you know, like I always explained to him, voice mails or when I talked to him directly, that, you know, these are some important things here that I need to get taken care of because I've been so far behind. You know, it's just like tomorrow, I mean, here I am now and I'm sitting here and I'm two years behind in my finances in my business and, you know, I have a meeting with my finance—my accountants. But at the same time here I am sitting here now, I mean, again dealing with an issue that's really irrelevant to everything that's important.

Transcript at 15-17. Thus, Harris was given ample opportunity to explain his reasons for the alleged violations of his home detention. Regardless, Indiana Code Section 35-38-2.6-5 governs and authorized the trial court to revoke Harris' home detention and order him to serve the remainder of his sentence at the Marion County Jail. Harris has not demonstrated any error.

Affirmed.

ROBB, C.J., and CRONE, J., concur.