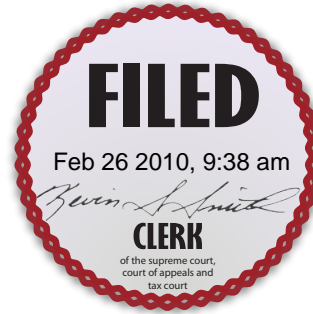


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TRAVIS CONN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0905-CR-449
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Steven R. Eichholtz, Judge  
Cause No. 49G23-0804-FD-79078

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**February 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Travis Conn (“Conn”) appeals from the trial court’s order revoking his placement in Community Corrections after pleading guilty to possession of cocaine within 1000 feet of a family housing complex,<sup>1</sup> a Class B felony. Conn presents the following issues for our review:

- I. Whether the trial court’s statement revoking Conn’s placement at Community Corrections was adequate; and
- II. Whether the trial court abused its discretion by remanding Conn to the Department of Correction to serve the balance of his sentence after Conn admitted to violating the rules of Community Corrections.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Conn pleaded guilty to Class B felony possession of cocaine on June 9, 2008, and was sentenced to six years to be served in Marion County Community Corrections (“Community Corrections”). On August 6, 2008, a “Notice of Violation of Community Corrections Rules” was filed alleging that Conn was a habitual conduct rule violator. The trial court held a revocation hearing on August 14, 2008, at which time the trial court found that Conn had violated the rules and, over objection, allowed Conn to continue to serve his sentence in Community Corrections subject to zero tolerance.

On April 16, 2009, the trial court held another revocation hearing on the allegations that Conn again had violated the rules of Community Corrections by having over ten hours of unaccounted time, leaving work early without reporting, being terminated from his place of

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<sup>1</sup> See Ind. Code § 35-48-4-6(b)(2)(B)(iii).

employment due to poor performance, and for being approximately \$2,500 in arrears in Community Corrections fees. The trial court found that Conn admitted the violations and ordered Conn to serve the balance of his sentence in the Department of Correction. Conn now appeals.

## **DISCUSSION AND DECISION**

### **Standard of Review**

“For purposes of appellate 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.” *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). A defendant “is not entitled to serve his sentence in a community corrections program but, as with probation, placement in the program is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Million v. State*, 646 N.E.2d 998, 1001-02 (Ind. Ct. App. 1995). A community corrections revocation hearing is civil in nature, and the State must prove the alleged violation by a preponderance of the evidence. *Decker v. State*, 704 N.E.2d 1101, 1104 (Ind. Ct. App. 1999). If an offender violates the terms of his placement, the court, after a hearing, may change the terms of the placement, continue the placement, or “[r]evoke the placement and commit the person to the [D]epartment of [C]orrection for the remainder of the person’s sentence.” Ind. Code § 35-38-2.6-5. We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant

has violated any terms of community corrections, we will affirm its decision to revoke placement. *Id.*

Before a trial court may revoke a defendant's placement in a community corrections program, the trial court must hold a hearing that satisfies the requirements of due process. *Davis v. State*, 669 N.E.2d 1005, 1008 (Ind. Ct. App. 1996). A defendant in community corrections is entitled to written notice of the claimed violation of the terms of his placement, disclosure of the evidence against the defendant, an opportunity to be heard and present evidence, and the right to confront and cross-examine adverse witnesses. *Id.*

### **I. Sufficiency of Revocation Statement**

Conn argues that the trial court failed to enter an adequate written statement of its reasons for revoking Conn's placement in Community Corrections. In *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. E. 2d. 484 (1972), the Supreme Court determined that due process in the probation revocation context requires, among other things, a written statement by the factfinder containing the evidence relied on and reasons for revoking probation. *Id.* at 408 U.S. 489, 92 S. Ct. at 2604, 33 L. Ed. 2d. at 499. That requirement was recognized in *Jaynes v. State*, 434 N.E.2d 923 (Ind. Ct. App. 1982). We have held that the *Morrissey* requirement is met where, in the probationer's presence, the trial court orally makes findings of fact, revokes probation, states the reasons for revocation, and the statement from the bench is later reduced to writing in the transcript of the hearing. *Mumford v. State*, 651 N.E.2d 1176, 1179 (Ind. Ct. App. 1995).

In the present case, the trial court's oral statement was reduced to writing in the transcript of the hearing satisfying the *Morrissey* requirement. The trial court stated as follows:

Well, it's not so much that [Defendant's proffered reason for his unaccounted time]. It's you weren't supposed to be doing that at all. You weren't supposed to be going to your house. Community Corrections is in lieu of the Department of Corrections[sic]. Okay. You don't get to make up your own sentence - -and do what you want to do just because there [are] things going on. You don't get to do that in the Department of Corrections[sic]. You don't get to do it on Community Corrections. We have very limited beds at Community Corrections and we need to use those for people that are going to follow the rules and do what they're supposed to do. Those that can't or won't, regardless of how some people it may sound [sic], well this is - - it makes sense to me. I mean, the fact of the matter is this is the second time that you've been here. And the last time Community Corrections said they didn't want you.

\* \* \*

The Court having found that you admitted to the violations shows that your Community Corrections placement be revoked. This being the second violation of Community Corrections, and that you will serve your sentence in the Department of Corrections [sic].

*Tr.* at 17-21. We find no error here, as the statement was adequate.

## **II. Abuse of Discretion**

Next, Conn argues that the trial court abused its discretion by failing to properly consider Conn's explanation for one of the violations of his placement in Community Corrections. When reviewing the sufficiency of the evidence in this context, we neither reweigh evidence nor judge witness credibility, but examine only the evidence most favorable to the judgment. *Mumford*, 651 N.E.2d at 1179.

At the hearing, after admitting that he had violated the rules of Community Corrections, Conn explained that the mother of his two young daughters had to leave the home early in the morning in order to get to work on time and had no one to watch the children for her. Conn admitted that he did not seek approval to do this, but falsified the record of his work hours with Community Corrections so that he could go to their home, stay with his daughters, and see them off to the sitter and school before reporting to work. The record reveals that Conn was routinely late for work by fifteen to twenty minutes. The falsification of his work hours meant that he had periods of time for which his whereabouts were unaccounted. Conn was placed in Community Corrections after one violation against the wishes of Community Corrections. Conn does not challenge the fact that he was fired from his employment due to poor performance, that he failed to pay his Community Corrections fees, and that he was placed in Community Corrections subject to zero tolerance stemming from his prior violation of the rules there. While we commend Conn for his significant effort at rehabilitation, we find that the evidence is sufficient to support the trial court's decision to revoke Conn's placement in Community Corrections. The trial court did not abuse its discretion.

Affirmed.

DARDEN, J., and MAY, J., concur.