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ATTORNEY FOR APPELLANT:

STANLEY L. CAMPBELL
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JARVIS DEVON JOHNSON,

Appellant/Defendant,

vs.

STATE OF INDIANA,

Appellee/Plaintiff.

No. 02A03-1003-CR-107

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0704-FC-101

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Jarvis Johnson appeals the revocation of his work release placement, arguing that the evidence was insufficient to support the trial court's order revoking his work release placement because the State failed to prove that he knew of the terms of his placement. Concluding that the evidence is sufficient to prove that Johnson was aware of the terms of his work release placement, we affirm.

FACTS AND PROCEDURAL HISTORY

In June of 2008, Johnson was convicted, pursuant to a plea agreement, of Class C felony burglary. The trial court sentenced him to three years in the Department of Correction ("DOC"). On September 30, 2008, the trial court amended its sentencing order and placed Johnson in the Allen County Work Release program for the remainder of his three-year sentence. On August 17, 2009, the State filed a petition to revoke Johnson's work release placement alleging, among other things, that Johnson had failed to obtain employment within the required time and, as a result, was in arrears on his payments.

On October 21, 2009, the trial court conducted a hearing on the State's petition, during which Allen County Work Release supervisor David Bell testified that Johnson had been unemployed since his last employment was terminated on June 22, 2009. Bell stated that Johnson was in violation of the terms of his work release placement because his period of unemployment, which was approximately ninety-one days, violated the requirement that Johnson secure new employment within twenty-one days of the termination of his prior employment. Bell further testified that Johnson was approximately $1330 in arrears for the work release program fees.

In addition, the State offered and the trial court admitted a document entitled "Allen County Work Release Agreement to Obtain Employment" which was signed by Johnson. State's Ex. 1. This document clearly set forth the terms of Johnson's work release placement, including Johnson's obligation to "find employment within [twenty-one] days from [his] termination date" from previous employment. State's Ex. 1. At the conclusion of the hearing, the trial court found Johnson in violation of the terms of his work release program and revoked Johnson's placement in work release. The trial court ordered Johnson to serve the remainder of his three-year sentence in the DOC. Johnson now appeals.

DISCUSSION AND DECISION

Johnson contends that the trial court erred in revoking his direct commitment to the Allen County Work Release program and ordering him to serve the remainder of his three-year sentence in the DOC. A work release program is a form of community corrections, which like probation, serves as an alternative to commitment to the DOC. *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). Placement in a community corrections program, including a work release program, is at the sole discretion of the trial court. *Toomey v. State*, 887 N.E.2d 122, 124 (Ind. Ct. App. 2008). "A defendant is not entitled to serve a sentence in either probation or a community corrections program." *McQueen*, 862 N.E.2d at 1242. "Rather, placement in either is a 'matter of grace' and a 'conditional liberty that is a favor, not a right.'" *Id*. If a defendant violates the terms of his placement in community corrections, the trial court may: (1) change the terms of the placement; (2) continue the placement; or (3) revoke the placement and commit the person to the DOC for

the remainder of the person's sentence. *Toomey*, 887 N.E.2d at 124 (citing Ind. Code § 35-38-2.6-5).

The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. *McQueen*, 862 N.E.2d at 1242. That is, a revocation of community corrections placement hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Id*. We will consider only the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *Id*. 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*.

On appeal, Johnson does not challenge the trial court's determination that he violated the terms of his work release placement. Rather, Johnson argues that the evidence was insufficient to support the trial court's order revoking his placement in the Allen County Work Release program because the State failed to prove that he knew the rules regarding his obligation to find new employment within twenty-one days of the termination of his prior employment. Indeed, this court has held that "notice to the defendant of the terms of his placement in work release is … a prerequisite to revocation of the placement." *Patterson v. State*, 750 N.E.2d 879, 883 (Ind. Ct. App. 2001) (quotation omitted).

We conclude that the evidence most favorable to the trial court's judgment proves that Johnson knew the terms of his placement in the Allen County Work Release program, including the requirement that Johnson secure new employment within twenty-one days of

the termination of his previous employment. During the revocation hearing, the trial court admitted a document entitled "Allen County Work Release Agreement to Obtain Employment" which was signed by Johnson. State's Ex. 1. This document clearly set forth the terms of Johnson's work release placement, including Johnson's obligation to "find employment within [twenty-one] days from [his] termination date" from previous employment. State's Ex. 1. In addition, work release supervisor Bell testified that Johnson had been specifically told of his obligation to secure new employment within twenty-one days of the termination of his previous employment. Further, nothing in the record tends to affirmatively show that Johnson was unaware of the requirement that he secure employment within twenty-one days of the termination of his previous employment. Johnson's argument essentially amounts to an invitation to reweigh the evidence, which we decline. *See McQueen*, 862 N.E.2d at 1242 (providing that on appeal, this court will consider only the evidence most favorable to the judgment of the trial court without reweighing that evidence).

Having concluded that the evidence most favorable to the trial court's judgment proves that Johnson knew the terms of his work release placement, including the rules regarding his obligation to secure employment within twenty-one days of the termination of prior employment, we affirm the trial court's judgment revoking Johnson's work release placement and committing him to the DOC for the remainder of his three-year sentence. *See Pavey v. State*, 710 N.E.2d 219, 221 (Ind. Ct. App. 1999) (providing that a defendant who was specifically instructed as to the terms of his community corrections placement and who signed an agreement stating that he would not violate any of those terms was sufficiently

advised of the terms of his placement in community corrections).

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J, concur.