

MEMORANDUM DECISION

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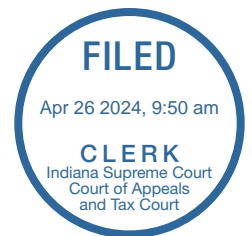


IN THE
Court of Appeals of Indiana

Fernando C. Arellano,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 26, 2024

Court of Appeals Case No.
23A-CR-2895

Appeal from the Jasper Superior Court
The Honorable Russell D. Bailey, Judge

Trial Court Cause No.
37D01-1702-F6-158

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

- [1] Fernando Arellano admitted to violating the conditions of his community corrections placement, and as a sanction, the trial court revoked Arellano's placement and ordered that he serve the remainder of his sentence in the Department of Correction ("DOC"). Arellano appeals and argues that the trial court abused its discretion in reaching this sanction by failing to consider certain mitigating circumstances. We are not persuaded by this argument, and accordingly, we affirm.

Issue

- [2] Arellano raises one issue, which we restate as whether the trial court abused its discretion in sanctioning Arellano as a result of his community corrections violation.

Facts

- [3] In 2017, Arellano pleaded guilty to fraud, a Level 6 felony, and in exchange, the State dismissed the remaining charges as well as charges in a separate case. The trial court sentenced Arellano to two years with placement in Jasper County Community Corrections, if he qualified, but otherwise in the DOC.
- [4] Arellano began his sentence on work release with Jasper County Community Corrections on April 10, 2023. On July 25, 2023, the State filed a motion for change of placement and alleged that Arellano violated the conditions of his

placement by testing positive for methamphetamine and amphetamine in a “random mouth swab drug screen” administered on July 7, 2023. Appellant’s App. Vol. II p. 75.

[5] The trial court held a hearing on the State’s motion on September 11, 2023, where Arellano admitted to the violation. Arellano further testified that he had employment “available” to him and that he had no outstanding fees. Tr. Vol. II p. 6. He requested that the trial court continue his community corrections placement. The trial court, however, ordered that Arellano serve the remainder of his sentence in the DOC.¹

[6] On September 19, 2023, Arellano filed a pro se motion to reconsider his sanction arguing that employment was “still available” for him, and he wanted to provide for his family. Appellant’s App Vol. II p. 84. The trial court held a hearing on Arellano’s motion on November 8, 2023, and denied the motion. Arellano now appeals.

¹ At the hearing, the State offered into evidence an exhibit, which contained allegations that, in addition to the charged violation allegation, Arellano also violated the conditions of his community corrections placement by: (1) failing to complete a “chore”; (2) arriving late to the work release facility and “l[ying]” to staff by claiming that he was “stuck in a traffic accident” when he was actually visiting the hospital, where he was not authorized to be; and (3) failing to pay fees. Ex. Vol. III p. 9. The exhibit indicated that Jasper County Community Corrections had sanctioned Arellano with two hours of community service for failing to complete the chore and that, after a hearing before the Jasper County Community Corrections Conduct Adjustment Board, Arellano was sanctioned with forty-eight hours of community service for the violation related to the arriving late and lying to staff. The State accepted Arellano’s contention that he had no outstanding fees. The State’s exhibit was admitted without objection. The trial court, however, stated that it did not base its sanction on the violations alleged in the State’s exhibit because Arellano had already been sanctioned for those violations.

Discussion and Decision

- [7] Arellano argues that the trial court abused its discretion by revoking his community corrections placement and ordering that he serve the remainder of his sentence in the DOC as a sanction for his community corrections violation. Arellano has not carried his burden of persuasion.
- [8] “The standard of review for revocation of a community corrections placement is the same standard as for a probation revocation.” *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019) (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). This is because “[b]oth probation and community corrections programs serve as alternatives to commitment to the DOC and both are made at the sole discretion of the trial court.” *Johnson v. State*, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016) (citing *Cox*, 706 N.E.2d at 549). Accordingly, placement in a community corrections program “is a matter of grace and not a right.” *Id.* (citing *Cox*, 706 N.E.2d at 549).
- [9] We review a trial court’s sanction for the violation of a community corrections placement under the abuse of discretion standard. *Pucket v. State*, 183 N.E.3d 335, 339 (Ind. Ct. App. 2022) (citing *Johnson*, 62 N.E.3d at 1230), *trans. denied*. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court. *Id.* (citing *Johnson*, 62 N.E.3d at 1230). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* (citing *Johnson*, 62 N.E.3d at 1230).

[10] Here, Arellano admitted to violating the conditions of his community corrections placement by testing positive for methamphetamine and amphetamine. Additionally, Arellano has an extensive criminal history, including multiple felony convictions. *See Utley v. State*, 167 N.E.3d 777, 784 (Ind. Ct. App. 2021) (affirming probation revocation based, in part, on probationer’s “extensive criminal history”), *trans. denied*. Arellano contends that the trial court failed to consider as mitigating circumstances that: (1) Arellano had employment available to him; (2) Arellano had family support; (3) Arellano could afford to pay community corrections program fees; and (4) the failed drug screen was “an isolated incident.” Appellant’s Br. p. 11. A trial court, however, is not required to consider mitigating circumstances when determining the sanction for a community corrections violation. *See, e.g., Porter v. State*, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Accordingly, the trial court did not abuse its discretion.

Conclusion

[11] The trial court did not abuse its discretion by revoking Arellano’s community corrections placement and ordering that he serve the remainder of his sentence in the DOC. Accordingly, we affirm.

[12] Affirmed.

Mathias, J., and Weissmann, J., concur.

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