

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Lawrence Jordan Pennington,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



May 8, 2024

Court of Appeals Case No.
23A-CR-2937

Appeal from the Vanderburgh Superior Court

The Honorable Robert J. Pigman, Judge

Trial Court Cause No.
82D03-2110-F2-5685

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Lawrence Jordan Pennington appeals the order that he serve four years in the Department of Correction (“DOC”) upon the revocation of his work release placement. Pennington presents the sole issue of whether the trial court abused its discretion and Pennington should receive no more than a one-year sanction because his actions regarding falsification of documents constituted a minor and technical violation of work release rules. We affirm.

Facts and Procedural History

- [2] On May 30, 2023, Pennington pled guilty to Dealing a Narcotic Drug, as a Level 3 felony,¹ and Resisting Law Enforcement, as a Level 6 felony.² He was given concurrent sentences of eight years and two years, respectively, with four years to be served on work release and four years to be served on probation. As a condition of his placement, Pennington agreed to cooperate with community corrections staff members and truthfully respond to reasonable inquiries.
- [3] On September 19, Pennington provided a document to his case manager stating that he had gone to a job interview for Community Action Program of

¹ Ind. Code § 35-48-4-1.

² I.C. § 35-44.1-3-1.

Evansville (“CAPE”). Pennington then reported that he had been hired by CAPE and would be working on September 23, 26, and 27, which included a Saturday. Pennington provided a contact name of Glenda Williams.

Pennington’s case manager contacted that person, who verified Pennington’s employment at CAPE. Pennington was reportedly to be working in the Energy Assistance Program and performing some janitorial duties.

[4] Pennington’s case manager decided to follow up by contacting the director of human resources for CAPE. The director advised the case manager that Pennington had not been hired by CAPE and, had he been an employee in the Energy Assistance Program, he would not have worked on a Saturday. The director also reported that CAPE employed a person by the name of Glenda Goodman, who did not have hiring authority. Further investigation revealed that Goodman and Pennington were romantically involved.

[5] On September 20, Pennington’s case manager filed a petition seeking revocation of Pennington’s placement in work release. A factfinding hearing was conducted on October 30. On November 14, the trial court revoked Pennington’s placement and ordered him to serve the executed portion of his sentence in the DOC. Pennington now appeals.

Discussion and Decision

[6] “Placement under either probation or a community corrections program is ‘a matter of grace and a conditional liberty that is a favor, not a right.’” *State v.*

Vanderkolk, 32 N.E.3d 775, 777 (Ind. 2015) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). We review probation violation determinations and sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law.” *Id.* (citations omitted). “As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses.” *Jenkins v. State*, 956 N.E.2d 146, 148 (Ind. Ct. App. 2011) (citation and quotation omitted), *trans. denied*.

[7] A defendant’s placement in community corrections may be revoked, and the defendant may be committed to the DOC for the remainder of his sentence, if the defendant “violates the terms of the placement” in community corrections. I.C. § 35-38-2.6-5; *see also Pavey v. State*, 710 N.E.2d 219, 221 (Ind. Ct. App. 1999) (“[W]e will affirm the revocation of placement in a community corrections program if, considering only the probative evidence and reasonable inferences therefrom, there is sufficient evidence supporting the conclusion that the individual within the program is guilty of violating any condition of the program.”).

[8] A probation or community corrections placement revocation proceeding is a two-step process. *Heaton*, 984 N.E.2d at 616. First, the trial court must determine whether the preponderance of the evidence showed that a probation violation occurred. *Id.*; I.C. § 35-38-2-3. Second, the trial court must determine

whether the probation violation warrants revocation of probation or some lesser sanction. *Heaton*, 984 N.E.2d at 616.

[9] Pennington does not deny that he provided false information to his work release case manager, enlisting the help of an accomplice to do so. He does not dispute that his actions violated the terms of his placement in work release. He does not explicitly challenge the trial court's decision to revoke his work release placement. Rather, he contends that the sanction is overly harsh and asks that we revise it to a term of one year in the DOC.

[10] Pennington directs our attention to *Johnson v. State*, 62 N.E.3d 1224 (Ind. Ct. App. 2016), which involved a review of probation violations that a panel of this Court deemed to be relatively minor in light of the appellant's limited intellectual functioning and financial resources. We concluded:

The evidence supports the trial court's determination that Johnson violated the term of his community corrections placement that he not leave his apartment and its decision to revoke the placement. However, under the circumstances reflected in the record, including the level of Johnson's functioning and his resources, his previous successful placement on work release, the nature of the violation, and the severity of the court's sentence, we conclude that the trial court abused its discretion in finding that Johnson's violation warranted serving the entirety of the remaining portion of his executed sentence in the DOC.

Id. at 1231. The *Johnson* Court referenced a trio of cases in which this Court had reversed a probation revocation or remanded for an additional sanction

hearing. *See Puckett v. State*, 956 N.E.2d 1182, 1188 (Ind. Ct. App. 2011) (remanding for the trial court to conduct another hearing regarding revocation of Puckett’s probation and to determine an appropriate sanction for his admitted and “not egregious” violation “without relying upon the improper factors,” i.e., the trial court had engaged in a lengthy discussion about personal beliefs); *see also Sullivan v. State*, 56 N.E.3d 1157, 1162 (Ind. Ct. App. 2016) (reversing a probation revocation and remanding for placement in community corrections where the probationer had not timely reported to community corrections but had been in a mental hospital on that day and had contacted his attorney with the impression that the attorney would report the hospital admission); *Ripps v. State*, 968 N.E.2d 323, 328 (Ind.Ct.App.2012) (reversing a probation revocation upon the Court’s conclusion: “Given Ripps’s medical condition, his attempt to adhere to the terms of his probation, the technical nature of the measurement between Ripley Crossing and the public library, the fact that he was in the process of moving out of Ripley Crossing when he was arrested, his having wrongly served time in prison for an offense that violated ex post facto principles, and the sheriff’s department having learned of his living arrangements only because Ripps reported his location, the trial court’s revocation of Ripps’s probation was an abuse of the trial court’s discretion.”).

[11] Pennington argues that “as in the above-cited cases, [his] violation is relatively minor.” Appellant’s Brief at 13. He asks that we conclude that a four-year executed sentence “is an extreme sentence for lying about getting a new job.” *Id.* But Pennington was not faced with the circumstances presented in the

group of decisions upon which he relies; that is, he did not have significant medical conditions or intellectual disabilities nor was he sanctioned in a proceeding in which a judge expressed personal beliefs. And Pennington's actions were not limited to a single misrepresentation about employment. Early in his work release placement, Pennington devised a scheme to get certain days away from the work release center. He involved a romantic partner in his ruse. Pennington falsely claimed that CAPE employed him, presented his case manager with a falsified document, and arranged for his partner to verify the purported employment. This was not a minor or inadvertent deviation from the rules. The sanction imposed does not amount to an abuse of discretion.

Conclusion

- [12] Pennington has not demonstrated that the trial court abused its discretion by ordering that he serve the previously suspended portion of his sentence in the DOC.
- [13] Affirmed.

Crone, J., and Pyle, J., concur.

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