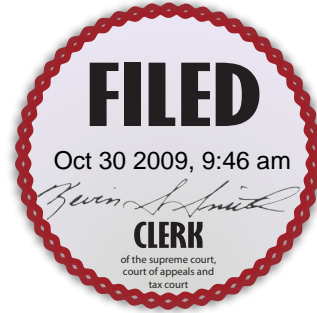


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**KIMBERLY A. JACKSON**  
Indianapolis, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**NICOLE DONGIEUX WIGGINS**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

KEVIN A. NASSER, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 84A01-0904-CR-194

---

APPEAL FROM THE VIGO SUPERIOR COURT  
The Honorable Michael R. Rader, Judge  
Cause No. 84D05-0708-FD-2595

---

**October 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Kevin A. Nasser (“Nasser”) appeals an order revoking his home detention placement and committing him to the Indiana Department of Correction (“the DOC”) to serve the remainder of his sentence for Operating a Vehicle as a Habitual Traffic Violator and Operating a Vehicle While Intoxicated, Class D felonies. We affirm.

## **Issue**

Nasser presents the sole issue of whether the trial court abused its discretion by ordering that he serve the balance of his previously-suspended sentence although the State recommended leniency.

## **Facts and Procedural History**

On January 23, 2008, Nasser pled guilty to Operating a Vehicle as a Habitual Traffic Violator<sup>1</sup> and to Operating a Vehicle While Intoxicated.<sup>2</sup> He was sentenced to concurrent three-year terms, all suspended. Nasser was to serve one year on home detention and two years on informal probation.

On January 23, 2009, the State filed a petition to revoke Nasser’s direct placement and probation, alleging that he had tested positive for illegal drugs on four occasions. On January 30, 2009, the State amended the petition to add an additional allegation of a failed drug screen. On March 3, 2009, Nasser admitted that he had violated the terms of his direct

---

<sup>1</sup> Ind. Code § 9-30-10-16(a)(1).

<sup>2</sup> Ind. Code § 9-30-5-3.

placement and was ordered to serve the balance of his previously-suspended sentence.<sup>3</sup> This appeal ensued.

### **Discussion and Decision**

Nasser admitted that he tested positive for drugs on five occasions during his placement outside the DOC. However, he claims that the trial court abused its discretion by ordering him to serve 700 days of his previously-suspended sentence because the State recommended a more lenient term of six months.

Community corrections is “a program consisting of residential and work release, electronic monitoring, day treatment, or day reporting[.]” Ind. Code § 35-38-2.6-2. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Monroe v. State, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). Rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” Million v. State, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995). If a defendant violates the terms of his placement in community corrections, the court may, after a hearing:

- (1) Change the terms of the placement.
- (2) Continue the placement.
- (3) Revoke 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. The “commission of a crime while serving time in the community corrections program is always grounds for revocation.” Decker v. State, 704 N.E.2d 1101, 1103 (Ind. Ct. App. 1999).

---

<sup>3</sup> After Nasser received credit for 358 days on home detention and 37 days served in the Vigo County Jail, the balance is 700 days.

Nasser admitted that he tested positive for cocaine on February 7, 2008, for methamphetamine and cocaine on July 27, 2008, for methamphetamine and cocaine on August 2, 2008, for alcohol and cocaine on January 10, 2009, and for methamphetamine on January 26, 2009. Pursuant to Indiana Code Section 35-38-2.6-5(3), the trial court had the option of revoking Nasser's placement and committing him to the DOC to serve the balance of his sentence. Nasser cites no authority for the proposition that the trial court was obligated to follow the recommendation of the State that six months, as opposed to 700 days, be reinstated. He has demonstrated no error of law or abuse of discretion on the part of the trial court.

Affirmed.

RILEY, J., and VAIDIK, J., concur.