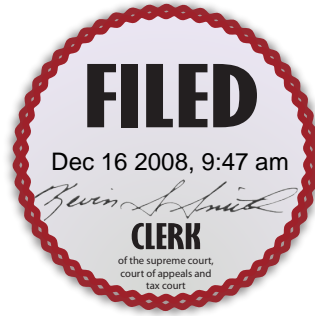


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN WRIGHT,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A04-0806-CR-338
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0612-FD-248156

December 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant John Wright appeals the revocation of his community corrections placement following a subsequent arrest, contending that the evidence was insufficient to prove that he violated the terms of his community corrections placement. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 25, 2006, Wright was charged with Class D felony operating a motor vehicle while a habitual traffic violator. On July 3, 2007, Wright pled guilty as charged pursuant to a written plea agreement and was sentenced to 365 days to be served in community corrections.

At approximately 11:30 p.m. on February 23, 2008, Wright, who at the time was serving his executed sentence in community corrections, was pulled over by Indianapolis Metropolitan Police Officer Eric Amos because the vehicle which Wright was driving did not have its lights on and had no visible license plate. A license check revealed that Wright's license had been suspended for life on August 14, 2007. Wright was subsequently arrested and was charged with operating a vehicle after a lifetime suspension.

A notice of violation of community corrections rules was filed on March 3, 2008, alleging that Wright was arrested for operating a vehicle after receiving a lifetime suspension on February 24, 2008. On April 30, 2008, Wright pled guilty to operating a vehicle after receiving a lifetime suspension and admitted through his attorney that he had violated the terms of his community corrections placement. With respect to the community corrections violation, the trial court sentenced Wright to time served. Wright now appeals.

DISCUSSION AND DECISION

Wright contends that the trial court erred in revoking his community corrections placement, claiming that the evidence was insufficient to prove that Wright violated the terms of his placement. Specifically, Wright claims that although his attorney indicated his intent to admit that he violated his community corrections placement by being arrested, no such admission was subsequently made by Wright. Additionally, Wright claims that while he did admit to committing the crime of operating after receiving a lifetime suspension on February 23, 2008, his admission does not support the allegation that he was arrested for committing that offense on the following day.

Initially, we note that like probation programs, community corrections programs serve the humane purpose of avoiding incarceration by providing an alternative to commitment to the Department of Correction, and also that placement in community corrections is ordered at the sole discretion of the trial court. *McQueen v. State*, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). “A defendant is not entitled to serve a sentence in either probation or a community corrections program.” *Id.* “Rather, placement in either is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)). Further, in order for sentencing alternatives to be viable options for Indiana judges, judges must have the ability to move with alacrity to protect public safety when adjudicated offenders violate the conditions of their sentences. *Id.* at 1242-43.

The standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. 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. 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. 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. at 1242 (citations omitted). Additionally, in light of the civil nature of the proceedings, a clear and unequivocal admission of the violation by the defendant's attorney is a judicial admission which is binding on the defendant. *Parker v. State*, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997).

In *Parker*, this court concluded that in light of the fact that a probation revocation proceeding is not a criminal proceeding, but a civil one, and the general rule that a client is bound by his attorney's actions in civil proceedings, the admission of a violation by a defendant's attorney was binding on the defendant. *Id.* The court further concluded that when a defendant enters into an agreement with the State by which the defendant agrees to admit to the violations in exchange for a particular sentence, the trial court's need to determine whether the defendant's violation warranted revocation is eliminated. *Id.* at n.4. The evidence in *Parker* established that Parker entered into an agreement with the State by which he agreed to admit to the violations and have his probation revoked in exchange for less than the entire suspended sentencing being imposed. *Id.* Therefore, the evidence was sufficient to support the trial court's finding that the defendant had violated his probation and the need for the trial court to determine whether the violation warranted revocation was eliminated. *Id.*

Similarly here, Wright entered into an agreement with the State whereby he agreed to

admit to the violation and the State agreed that his sentence on the community correction violation should be time served. In describing the agreement to the trial court, the following exchange occurred between the trial court, Wright's attorney, and Wright:

[Wright's Counsel]: At this time, the defendant, John Wright, would withdraw his former pleas of not guilty to Count I, Operating a Motor Vehicle After a License Forfeited For Life, a Class C felony, and to the Community Corrections Violation in the ... Court 15 case. Would make an admission to the Community Corrections violation.

[The Court]: Okay. And that file is here. And the recommendation is a cap of four years?

[Wright's Counsel]: Yes, Your Honor.

[The Court]: All right.

[Wright's Counsel]: Time-served on the ...

[The Court]: And time-served on the Community Corrections case?

[Wright's Counsel]: Yes, on the Community Correction.

[The Court]: All right. Mr. Wright, did you hear what your attorney just stated as the terms of your plea agreement?

[Defendant]: Yes, ma'am.

[The Court]: And is that your understanding of the agreement?

[Defendant]: Uh, yes, it is.

[The Court]: Why are you pleading guilty? Are you guilty?

[Defendant]: Yes, I'm guilty.

* * * *

[The Court]: Okay. And he's admitting to the violation?

[Wright's Counsel]: He is, Your Honor. The violation is that he was arrested on it.

Tr. p. 5-6. We conclude that Wright's attorney's statements were clear and unequivocal and therefore constituted a judicial admission which is binding on Wright. We further conclude that these statements coupled with Wright's own statements that he understood the terms of his plea agreement and that he was guilty, sufficiently support the trial court's determination that Wright violated the terms of his placement in community corrections. Additionally, given Wright's agreement with the State by which he agreed that he would admit the

violation in exchange for a sentence of time served, the trial court did not need to determine whether the violation warranted revocation. *Parker*, 676 N.E.2d at 1086 n.4.

Additionally, Wright claims that he was denied due process because a discrepancy between his admission that he committed the crime of operating after receiving a lifetime suspension on February 23, 2008, and the evidence that he was arrested on this charge on February 24, 2008, constitutes fundamental error, requiring reversal. The “fundamental error” doctrine is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. *McQueen*, 862 N.E.2d at 1241. “For error to be ‘fundamental,’ prejudice to the defendant is required.” *Hopkins v. State*, 782 N.E.2d 988, 991 (Ind. 2003). The defendant bears the burden of proving that such a fundamental error occurred that rendered the trial unfair. *Caron v. State*, 824 N.E.2d 745, 751 (Ind. Ct. App. 2005).

Here, Wright claims that he “was denied due process when he was found to have committed a violation which was different than that which he was apprised through the notice of violation.” Appellant’s Br. p. 6. Wright, however admitted that, as was alleged in the notice of violation, he was arrested for driving a vehicle after having received a lifetime suspension following the traffic stop that was described by the evidence at his guilty plea and community corrections violation hearing. In light of Wright’s admission, we conclude that Wright was found to have committed the same violation of which he was apprised through the notice of violation, and as a result, Wright has failed to carry his burden of proving that

he was prejudiced by the alleged error. Wright, therefore, cannot establish fundamental error on this issue.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.