

MEMORANDUM DECISION

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

Kristin Anne Mulholland
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Christopher Lawrence
Rocheffort,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 17, 2021

Court of Appeals Case No.
21A-CR-768

Appeal from the Lake Superior
Court

The Honorable Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-1801-F5-8

Brown, Judge.

[1] Christopher Lawrence Rochefort appeals the revocation of his probation and claims the trial court failed to properly conduct a hearing on whether his failure to return to community corrections warranted revocation of his placement. We affirm.

Facts and Procedural History

[2] On January 30, 2018, the State charged Rochefort under cause number 45G04-1801-F5-8 (“Cause No. 8”), the cause from which this appeal arises, with burglary as a level 5 felony. On May 29, 2018, Rochefort and the State entered into a stipulated plea and agreement pursuant to which he would plead guilty as charged, he would be sentenced to three years in the Department of Correction (“DOC”) to be served in the Lake County Community Corrections Kimbrough Work Program if he qualified, and the State would “dismiss Cause# 45G04-1801-F5-00012.” Appellant’s Appendix Volume II at 35. On February 26, 2019, the court sentenced Rochefort pursuant to the agreement.

[3] On April 11, 2019, the State filed a Petition to Expel from Lake County Community Corrections alleging that Rochefort had absconded from lawful detention on April 9, 2019, while on a medical pass at Edgewater Health. That same day, the State charged Rochefort with failure to return to lawful detention as a level 6 felony under cause number 45G04-1904-F6-796 (“Cause No. 796”).

[4] On August 2, 2020, Rochefort filed a Motion for Evaluation for Qualification into the Veterans’ Treatment Court under Cause Nos. 8 and 796. On August 11, 2020, the court held a hearing at which Rochefort appeared in custody via

Zoom and by counsel. After some discussion, the court denied the motion for evaluation with respect to Cause No. 8. Rochefort's counsel stated:

When you consider the allegations in the new case and you consider the – that part of the – part of the allegations in the Petition to Expel deal with the – one of the allegations in the new case, it seems like it's a – that the two cases can be resolved fairly quickly.

Transcript Volume 2 at 14. After some discussion, the court asked Rochefort's counsel if Rochefort disputed the charge of failure to return, and he answered: "He's pled not guilty to that, yes, Judge." *Id.* The court ordered two physicians to evaluate Rochefort for competency.

[5] On February 17, 2021, Rochefort filed a Verified Motion to Deny Lake County Community Corrections' Petition to Expel, a Verified Motion to Compel Sentence Modification, and a Verified Motion to Vacate Judgment and Underlying Plea Agreement.

[6] On February 23, 2021, the court held a hearing, and Rochefort appeared in custody with counsel. The court asked if the matter was set for a status conference, and Rochefort's counsel stated it was set for a hearing concerning three motions that were filed including a motion to return Rochefort to community corrections with services to be provided by the Veterans' Treatment Court program, a motion to compel the State to agree to a sentence modification, and a motion to vacate the judgment and plea agreement.

Rochefort's counsel also stated that Rochefort "wants to essentially tie the resolution of the new case with the resolution of the PTR case." *Id.* at 21.

[7] The court spoke with Ms. Thorpe¹ and stated: "You filed a Petition to Expel Mr. Rochefort from Community Corrections. He's filed a petition to go back to Community Corrections to receive treatment. What's your position on all that?" *Id.* at 35. Ms. Thorpe answered: "Our position is that we stand with the Petition to Expel due to his failure to return and his failure to pay fees when he was here, so we stand on our petition." *Id.* at 35-36. The court then asked Rochefort if he wanted to address the court "on these issues." *Id.* at 36. Rochefort stated that he suffered from "conditions of worry and tension headaches," was a veteran, began working when he was ten years old, had never had a felony before his burglary charge, and was "not contesting that [he] did something wrong and was charged with that crime or those crimes." *Id.* at 37-38.

[8] The court stated that Rochefort fled and was gone for over a year and asked him if he knew that it was a violation to flee. Rochefort stated that he previously asked for the reason for the petition to expel and was told it was for failure to pay fees. The court explained that his new charge was fleeing and asked him if he understood that leaving community corrections without returning was a violation. Rochefort answered: "Yes, I am aware. Judge, I am

¹ The record does not identify Ms. Thorpe's first name but she answered affirmatively when asked if she was "here on Mr. Rochefort." Transcript Volume II at 34.

aware of that.” *Id.* at 42-43. He stated that “an official escorted [him] to Edgewater for assessments,” “the person . . . abandoned [him] inside of Edgewater,” and “[t]hey didn’t even escort [him] back to work release.” *Id.* at 44. He also stated: “After months of harassment and suffering from these tension headaches, I felt like maybe I was hemorrhaging. And they denied me even Ibuprofens at the place of work release that I associated harm with being at the place at the time and was homeless upon not returning.” *Id.* The court denied Rochefort’s motions. That same day, it entered an order finding that Rochefort violated the rules of community corrections by failing to return to lawful detention and reaffirmed the jury trial in Cause No. 796.

[9] On March 9, 2021, a jury found Rochefort guilty of failure to return to lawful detention as a level 6 felony in Cause No. 796. On March 30, 2021, the court held a sentencing hearing in Cause Nos. 8 and 796. Rochefort’s counsel indicated he was ready to proceed and later indicated he did not have any evidence. The court gave Rochefort the opportunity to speak.

[10] On April 5, 2021, the court entered an order under Cause Nos. 8 and 796 finding that Rochefort was convicted of failure to return to lawful detention as a level 6 felony and sentenced him to two years and three months. It sentenced

him to the original three years in the DOC with jail time credit for certain periods under Cause No. 8.²

Discussion

[11] Rochefort argues that the trial court failed to properly conduct a hearing on whether his violation of the community corrections placement warranted revocation. He asserts that, while he did not object to the lack of a hearing, the failure to conduct the hearing was a violation of his rights and constituted fundamental error.

[12] For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. *Holmes v. State*, 923 N.E.2d 479, 482 (Ind. Ct. App. 2010) (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh'g denied*). Although probationers are not entitled to the full array of constitutional rights afforded defendants at trial, the Due Process Clause of the Fourteenth Amendment does impose procedural and substantive limits on the revocation of the conditional liberty created by probation. *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008). The minimum requirements of due process that inure to a probationer at a revocation hearing include: (a) written notice of the claimed violations of probation; (b) disclosure of the evidence against him; (c) an

² In a separate appeal, Rochefort appealed his conviction in Cause No. 796, and this Court affirmed. *See Rochefort v. State* (filed September 29, 2021), Ind. App. No. 21A-CR-770, slip op. at 2.

opportunity to be heard and present evidence; (d) the right to confront and cross-examine adverse witnesses; and (e) a neutral and detached hearing body. *Id.* See also Ind. Code § 35-38-2-3 (providing that “the court shall conduct a hearing concerning the alleged violation” and “[a] person may admit to a violation of probation and waive the right to a probation violation hearing after being offered the opportunity to consult with an attorney”).

[13] At the February 23, 2021 hearing, the court gave Rochefort an opportunity to speak, and Rochefort, who was represented by counsel, provided an explanation regarding his violation and acknowledged that his failure to return constituted a violation of the community corrections program. At the March 30, 2021 hearing, the trial court referenced Cause Nos. 8 and 796, Rochefort’s counsel indicated he was ready to proceed and indicated he did not have any evidence, and the court again gave Rochefort the opportunity to speak. Under these circumstances, we cannot say that reversal is warranted. See *Moore v. State*, 102 N.E.3d 304, 309-310 (Ind. Ct. App. 2018) (observing that the defendant was given an opportunity to present evidence and argument at the combined sentencing and probation revocation hearing, the defendant did not suggest he was unaware of the probation violation alleged, and the trial court could take judicial notice of the defendant’s new conviction, and holding that the defendant could not demonstrate his probation was revoked in a manner that violated Ind. Code § 35-38-2-3 or the defendant’s right to due process), *reh’g denied*.

[14] For the foregoing reasons, we affirm the trial court's order revoking Rochefort's community corrections placement.

[15] Affirmed.

Najam, J., and Riley, J., concur.