MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Toby Wayne Lowry,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 4, 2022

Court of Appeals Case No. 22A-CR-346

Appeal from the Vermillion Circuit Court

The Honorable Robert M. Hall, Special Judge

Trial Court Cause No. 83C01-1702-F2-1

Bradford, Chief Judge.

Case Summary

[1] Toby Wayne Lowry pleaded guilty to Level 2 felony dealing methamphetamine, Level 4 felony possession of methamphetamine, two counts of Level 6 felony possession of a controlled substance, and Level 6 felony possession of a syringe and was sentenced to an aggregate twenty-five-year sentence with seven years suspended. After serving less than two years of his sentence, Lowry petitioned for a sentence modification after completing several programs, and he was released from the Indiana Department of Correction ("DOC") to serve five years of his previously-executed sentence on community-corrections home detention, with the remainder of the twenty-five-year sentence to be suspended to probation. A little over a year after Lowry began serving his term of home detention, law enforcement officers received information that Lowry was again using methamphetamine, and after a search of his home, methamphetamine and drug paraphernalia were discovered. The State filed petitions to revoke Lowry's probation and community-corrections placement. Lowry was also charged with new crimes under a separate cause number based on the items found in his home during the search. After an evidentiary hearing, the trial court granted the petitions to revoke and ordered Lowry to serve the remaining balance of his sentence in the DOC.

[2] Lowry appeals and raises the following issues: (1) whether the trial court abused its discretion in admitting the evidence discovered during the search of his home because the search was not supported by reasonable suspicion; (2) whether the trial court abused its discretion when it admitted statements made

by Lowry because he was not given *Miranda* warnings; (3) whether the evidence was sufficient to revoke his probation and his community-corrections placement; (4) whether it was an abuse of discretion to revoke his entire previously-suspended sentence; and (5) whether the trial court properly calculated Lowry's credit time. We conclude that the trial court properly admitted both the evidence found in the search and Lowry's statements, sufficient evidence was presented to support the revocation of Lowry's probation, and the trial court did not abuse its discretion when it ordered Lowry to serve the entirety of his previously-suspended sentence. However, we conclude that the trial court did not properly calculate Lowry's credit time and included an erroneous sentence on the abstract of judgment and CCS. We, therefore, affirm the trial court's judgment but reverse its disposition order to the extent it is in error and remand for a hearing to correct the award of credit time and the sentence entered as to Lowry's Level 2 felony conviction.

Facts and Procedural History

[3] In April 2017, Lowry pleaded guilty to Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, two counts of Level 6 felony possession of a controlled substance, and Level 6 felony possession of a syringe. At that time, Lowry already had an extensive criminal record that included three prior felony convictions, eight prior misdemeanor convictions, and numerous prior violations of probation. In October 2017, the trial court sentenced Lowry to twenty-five years on his Level 2 felony dealing

methamphetamine conviction and imposed shorter, concurrent sentences on his other convictions. The trial court suspended seven years of the sentence, with the first two of those years to be served on community-corrections home detention and the last five years on probation. The trial court also recommended Lowry for placement in the Purposeful Incarceration Program and another treatment program and stated it would consider sentence modification upon successful completion of the programs.

[4] While in the DOC, Lowry completed the Purposeful Incarceration Program, which was a ten-month, "live-in" intensive program, as well as several other programs related to methamphetamine abuse, relapse prevention, and life skills. Tr. Vol. II pp. 11–13. In June 2019, Lowry filed a motion for modification of sentence, and over the prosecutor's objection, the trial court granted the motion for modification in August 2019. The trial court did not shorten the original term of twenty-five years but modified the terms of the sentence by ordering Lowry to be released from the DOC, serve five years on community-corrections home detention, and then serve the balance of the sentence on probation. Lowry began serving his term of home detention on September 16, 2019.

[5] As part of the conditions of his probation and home detention agreement, Lowry signed waivers of his Fourth Amendment rights, which authorized law enforcement and probation and community-corrections officials to search his person or property "at any time, with reasonable suspicion" but without probable cause or a warrant. Appellant's App. Vol. II p. 6; Supp. Tr. pp. 8–10; Supp. Ex. Vol. p. 9. The terms of probation and home detention also required

Lowry to obey all laws, not commit any new crimes, and not possess or consume any drugs. When he began home detention, Lowry was evaluated by Choices Counseling, which included a drug-and-alcohol assessment, and Choices determined that he needed no further treatment.

[6] Vermillion County Sheriff's Deputy Nicholas Hall has known Lowry for most of his law enforcement career. When Deputy Hall saw Lowry shortly after his release from the DOC, he "nearly didn't recognize him" because after his drug-free time in prison, Lowry looked "very healthy," and his face and body had filled out. Supp. Tr. p. 55. Lowry initially did well on home detention and accrued no violations, and he was employed at a masonry company. His community-corrections case worker, Ryan White, checked in with Lowry approximately every month from December 2019 until November 2020, and Lowry remained employed and was doing well. Travis Russell, who had been a friend of Lowry's since high school, began working for the same masonry company as Lowry. Russell was also a recovering methamphetamine addict who was on probation at the time for a methamphetamine-possession conviction. Russell and Lowry began hanging out together after Lowry was released from the DOC, and at some point in September or October 2020, they began using methamphetamine together.

[7] In the fall of 2020, Deputy Hall received information from multiple sources that Lowry and Russell were using and dealing methamphetamine again. Deputy Hall had also observed Lowry around town during this time period and noticed that Lowry was losing weight and no longer looked as healthy as he had when

he was released from the DOC. The deputy was familiar with how methamphetamine users look and believed that it had started "becoming obvious" that Lowry was "back in the game" based on the changes in his physical appearance. Supp. Tr. p. 56.[1] Deputy Hall had changed his patrol route to do some surveillance of Lowry's residence, and he had observed Russell's car there at different times in the afternoon and evening. Deputy Hall contacted community corrections to request a home visit and search, explaining all the information he had received. Community corrections determined there was reasonable suspicion and approved the home visit.

[8] On November 23, 2020, Deputy Hall, White, and several other law enforcement officers went to Lowry's home to conduct the home visit and search. When they arrived, Deputy Hall and White spoke to Lowry on the front porch and advised him that they had information he was using methamphetamine again and were there to conduct a Fourth Amendment waiver search pursuant to his probation and home detention conditions. At that time, Lowry indicated that he wished to speak to Deputy Hall and White privately and invited them into the kitchen away from the other officers. Once in the kitchen and before any contraband was discovered in the search, Lowry admitted that he had "messed up" and used methamphetamine, and he

[1] White, Lowry's community-corrections case worker, had also noticed that Lowry's appearance changed over time and that he became "noticeably thinner." Supp. Tr. p. 20.

admitted there was methamphetamine as well as some paraphernalia in the home. *Id*. at 20–21, 58–60. He said there used to be 3.5 grams of methamphetamine, but he had used "quite a bit of it." *Id*. at 60. During the search of Lowry's home, police discovered a bag of a crystalline substance that later tested positive for methamphetamine, two syringes, a spoon containing residue, and several glass smoking devices, some of which also contained residue. Based on the residue and burn marks on these devices, Deputy Hall believed that they had been used repeatedly.

[9] Lowry was arrested, and the State filed criminal charges against him under cause number 82C01-2011-F5-34 ("Cause No. F5-34") based on the drugs and paraphernalia found in his home during the search. The State also filed notices to revoke Lowry's probation and his placement on community corrections, alleging that he had violated the terms of both by possessing a controlled substance and committing and being charged with new offenses in Cause No. F5-34. The trial court found probable cause existed that Lowry violated the terms and conditions of probation and community corrections and issued a warrant for Lowry's arrest on December 1, 2020.

[10] In Cause No. F5-34, Lowry filed a motion to suppress, alleging that the search of his home violated the Fourth Amendment because it was not supported by reasonable suspicion and that his Fifth Amendment rights had been violated when the officials talked to him in the kitchen without advising him of his *Miranda* rights. The trial court denied the motion to suppress, and Lowry filed an interlocutory appeal of that ruling. On June 13, 2022, this court affirmed the

trial court's ruling and held that the search had not violated the Fourth Amendment because it had been supported by reasonable suspicion and that there had been no violation of *Miranda* because Lowry had not been in custody when he made his voluntary admissions of misdoings. *Lowry v. State*, No. 21A-CR-2507, 2022 WL 2112193 (Ind. Ct. App. June 13, 2022), *trans. denied*.

[11] At the evidentiary hearing on the petitions to revoke probation and placement on community corrections, Lowry objected to the admission of his statements made to Deputy Hall and White in the kitchen in his home because he had not been advised of the *Miranda* warnings and objected to the admission of the evidence found in his residence because the search had not been supported by reasonable suspicion. The trial court overruled both objections.

[12] At the conclusion of the hearing, the trial court took the matter under advisement, and on September 30, 2021, the trial court issued an order, finding that the State had met its burden of proof and granted both petitions to revoke. A dispositional hearing was held, and the trial court found that Lowry had been given various chances, that the trial court had tried different things, but that everything tried had failed to rehabilitate him, and that it was clear he posed a danger to himself and others. The trial court ordered Lowry to serve the remaining balance of his sentence in the DOC. Lowry had been served with the warrant for his violations on December 1, 2020, so the trial court awarded him credit for the 373 days he spent incarcerated pending the revocation proceedings between December 1, 2020, and December 8, 2021. The trial court stated that Lowry was entitled to both accrued time and good-time credit for

this period of time. Although Lowry had been sentenced to twenty-five years for his Level 2 conviction in his underlying criminal case, both the docket entry on the CCS and the amended abstract of judgment issued after the revocation proceedings reflect that Lowry had been given a ten-year sentence on his Level 2 felony dealing conviction.

Discussion and Decision

I. Admission of Evidence

[13] Lowry argues that the trial court abused its discretion by admitting evidence at the revocation hearing that had been obtained in violation of his Fourth Amendment rights because the search of his home had not been based on reasonable suspicion and by admitting statements made in violation of his Fifth Amendment rights because he had not been given his *Miranda* warnings. We review decisions regarding the admission of evidence in probation revocation hearings for an abuse of discretion. *Holmes v. State*, 923 N.E.2d 479, 483 (Ind. Ct. App. 2010). An abuse of discretion occurs if a decision is clearly against the logic and effects of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.* The Indiana Rules of Evidence do not apply in probation matters, and trial courts in both probation-revocation proceedings and community-corrections placement revocation proceedings are "allow[ed] even more flexibility in the admission of evidence[.]" *Christie v. State*, 939 N.E.2d 691, 693 (Ind. Ct. App. 2011) (citing Indiana Evid. Rule 101(d)(2)

(providing that the Rules of Evidence, other than those with respect to privileges, "do not apply in . . . [p]roceedings relating to . . . probation").

[14] On 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. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999). Both programs serve as alternatives to commitment to the DOC and are made at the sole discretion of the trial court. *Id*. A defendant is not entitled to serve a sentence in either probation or a community-corrections program, and placement in either is a "matter of grace" and a "conditional liberty that is a favor, not a right." *Id*.

[15] A probation revocation hearing is in the nature of a civil action, and therefore does not equate with an adversarial criminal proceeding. *Grubb v. State*, 734 N.E.2d 589, 591 (Ind. Ct. App. 2000), *trans. denied*.

> As such, a probationer who is faced with a petition to revoke his probation, although he must be given "written notice of the claimed violations, disclosure of the evidence against him, an opportunity to be heard and present evidence, the right to confront and cross-examine adverse witnesses, and a neutral and detached hearing body," is not entitled to the full panoply of rights that he enjoyed prior to his conviction.

Id. (quoting *Isaac v. State*, 605 N.E.2d 144, 148 (Ind. 1992)).

[16] Given the distinction between formal criminal proceedings and probation-revocation hearings, the exclusionary rule is not fully applicable. *Pa. Bd. of Prob.*

& Parole v. Scott, 524 U.S. 357, 365–69 (1998) (holding that exclusionary rule did not bar introduction of evidence seized in violation of parolee's Fourth Amendment rights at parole revocation hearing); *Henderson v. State*, 544 N.E.2d 507, 512–13 (Ind. 1989) (noting that exclusionary rule is not fully applicable in probation revocation hearings); *Plue v. State*, 721 N.E.2d 308, 310–11 (Ind. Ct. App. 1999) (holding that exclusionary rule did not bar evidence obtained as a result of illegal search and seizure at probation revocation proceeding); *Dulin v. State*, 169 Ind. App. 211, 219–20, 346 N.E.2d 746, 752 (1976) (holding that exclusionary rule is not fully applicable in probation-revocation hearings).

[17] In a probation-revocation hearing, illegally-seized evidence will be excluded only if it was seized as part of a continuing plan of police harassment or in a particularly offensive manner. *Henderson*, 544 N.E.2d at 513; *Plue*, 721 N.E.2d at 310. *But cf. Polk v. State*, 739 N.E.2d 666, 669 (Ind. Ct. App. 2000) (applying exclusionary rule to probation revocation proceeding without concluding that evidence was seized as part of a continuing plan of police harassment or in a particularly offensive manner and distinguishing *Plue* due to the fact that defendant in *Polk* was not detained as part of the enforcement of his conditions of probation).

[18] Here, Lowry makes no argument that the search of his home was part of a continuing plan of police harassment or that the evidence was seized in a particularly offensive manner, nor did he present any evidence supporting such a claim. During the approximately fourteen months that Lowry was on home detention, White checked in with him approximately once a month by either

phone call or home visit. Lowry was never found to be in violation of any rules, and the amount of personal time he was given was increased. The search at issue here was the first home search that Lowry was subjected to while on home detention. The circumstances of the search do not establish that the evidence was seized as part of a continuing plan of police harassment or in a particularly offensive manner. Accordingly, we conclude that the trial court properly admitted the evidence found during the search of Lowry's home.

[19] As for the statements Lowry made to Deputy Hall and White, this court has also held that statements obtained in violation of *Miranda* are admissible in probation revocation hearings. *Grubb*, 734 N.E.2d at 591–93. "The Fifth Amendment protection against self-incrimination, by its terms, applies only to 'criminal case[s].'" *Id.* at 591 (quoting U.S. Const. amend. V). As we held in *Grubb*, the same reasons for which the exclusionary rule does not apply to probation hearings apply equally to the question of suppressing non-Mirandized statements. *Id*. at 592.

[20] As with his argument that the evidence was illegally found at his home, Lowry does not argue that the circumstances of this case were part of a continuing plan of police harassment or were particularly offensive in any way to constitute an exception to this rule. After Deputy Hall and White approached Lowry on his front porch, Lowry invited them into his kitchen so he could talk to them privately without the officers around, and they talked to Lowry about their concerns that he was involved with drugs again, which was a legitimate issue for community corrections to be concerned about and to investigate.

Accordingly, we conclude that the trial court properly admitted Lowry's statements.[2]

II. Sufficient Evidence

[21] Lowry contends that the State failed to present sufficient evidence to support his violations of probation and community-corrections placement and therefore did not meet its burden of proving the allegations by a preponderance of the evidence. A hearing on a petition to revoke placement in a community-corrections program is treated the same as a hearing on a petition to revoke probation. *Cox*, 706 N.E.2d at 549. As mentioned, both probation and community-corrections programs serve as alternatives to commitment to the DOC, and placement in both are made 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," and "placement in either is a 'matter of grace' and a 'conditional liberty that is a favor, not a right.'" *Id*.

[22] We review a trial court's revocation of a defendant's community-corrections placement for an abuse of discretion. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* A

[2] We note that the State, in its Appellee's Brief, argues that Lowry's arguments on the admission of evidence are barred by the doctrines of res judicata and law of the case. However, we need not address these arguments of the State based on our determination of the issues above.

probation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. *Cox*, 706 N.E.2d at 551. When reviewing a revocation of community-corrections placement, we "consider all the evidence most favorable to supporting the judgment of the trial court" and do not reweigh the evidence or judge the credibility of witnesses. *Id.* So long as there is "substantial evidence of probative value to support the trial court's conclusion" that the defendant violated any term of his placement in community corrections, we will affirm the trial court's decision to revoke that placement. *Id.*

[23] Lowry's conditions of probation and his home detention agreement required him to obey all laws, not commit any new crimes, and not possess or consume any drugs. The evidence presented to the trial court was sufficient to prove by a preponderance of the evidence that Lowry violated these conditions of his probation and placement on community corrections. Deputy Hall had received information from multiple sources that Lowry and Russell were using methamphetamine again, which was corroborated by Deputy Hall's observations that Lowry had become thinner and looked less healthy over time and that Russell's car was at Lowry's residence at different times in the afternoons and evenings. When Deputy Hall and White arrived at Lowry's home on November 23, 2021, Lowry admitted to them that he had "messed up," that he had used methamphetamine with Russell, and that they would find methamphetamine and paraphernalia in his house. Supp. Tr. pp. 20–21, 59–61. The police found a bag of methamphetamine, two syringes, a spoon with

residue, and numerous glass smoking devices, some of which contained residue. Russell testified that he and Lowry had started using methamphetamine together while Lowry was on home detention. Therefore, the evidence presented at Lowry's revocation hearing clearly proved by a preponderance of the evidence that he had possessed and used an illegal drug and that he had violated the law by possessing methamphetamine and paraphernalia.

III. Choice of Sanction

[24] Lowry asserts that the trial court abused its discretion when it revoked the entirety of his suspended sentence and ordered it served in the DOC. "'Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.'" *Cain v. State*, 30 N.E.3d 728, 731 (Ind. Ct. App. 2015) (quoting *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007)), *trans. denied*. "Courts in probation revocation hearings 'may consider any relevant evidence bearing some substantial indicia of reliability.'" *Id*. (quoting *Cox*, 706 N.E.2d at 551). "It is within the discretion of the trial court to determine the conditions of a defendant's probation and to revoke probation if the conditions are violated." *Id*. "[A]ll probation requires 'strict compliance'" because "once the trial court extends this grace and sets its terms and conditions, the probationer is expected to comply with them strictly." *Id*. at 731–32 (quoting *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008)). "If the probationer fails to do so, then a violation has occurred." *Id*. If a violation is proven, the trial court

must determine if the violation warrants revocation of the probation. *Sullivan v. State*, 56 N.E.3d 1157, 1160 (Ind. Ct. App. 2016).

[25] If the trial court determines a probationer has violated a term of probation, it may impose one or more of the following sanctions: (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person's probationary period for not more than one year beyond the original probationary period; or (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3(h). We review a trial court's sentencing decisions for probation violations under an abuse of discretion standard. *Knecht v. State*, 85 N.E.3d 829, 840 (Ind. Ct. App. 2017). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id*.

[26] Lowry argues that the trial court abused its discretion when it ordered him to serve the entirety of his previously-suspended sentence. In announcing its disposition, the trial court noted that Lowry had been "given various chances" and that different things had been tried but had failed. Tr. Vol. II p. 72. The trial court stated that it was apparent that Lowry posed a danger to the public and to himself due to his drug use. The evidence showed that, when the trial court revoked his probation and placement in community corrections, Lowry had an extensive criminal record that included eight felony convictions and eight misdemeanor convictions. He had previously been given numerous opportunities on probation in his prior cases but repeatedly failed to comply with probation and was unsatisfactorily discharged.

[27] Lowry's underlying convictions in this case were for Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, two counts of Level 6 felony possession of a controlled substance, and Level 6 felony possession of a syringe, for which he was originally sentenced to a twenty-five year aggregate sentence with seven years of the sentence suspended, and the first two of those years to be served on community-corrections home detention and the last five years on probation. After serving less than two years of his executed sentence, Lowry was granted a sentence modification that allowed him to be immediately released from the DOC to serve five years on home detention with the remainder of the twenty-five years to be served on probation. In requesting a sentence modification, Lowry testified that he had been rehabilitated because he had successfully completed the Purposeful Incarceration Program, which was an intensive, live-in substance abuse and behavior modification program, as well as several other programs related to life skills, methamphetamine addiction, and relapse prevention. However, after only about one year on home detention, Lowry began using drugs again and committing criminal offenses.

[28] The commission of a new crime justifies a trial court's decision to order a defendant to serve his entire sentence in prison. *See Terpstra v. State*, 138 N.E.3d 278, 289–90 (Ind. Ct. App. 2019) (holding there was no abuse of discretion where the trial court ordered defendant to serve entire sentence after the defendant committed a new crime while on probation), *trans. denied*; *Knecht*, 85 N.E.3d at 840 (affirming trial court's imposition of entire previously-suspended

sentence following defendant's commission of new offense of child molesting in light of the short period of time before the violation and the nature of violation). Here, Lowry's new crimes were closely related to the crime for which he was on probation and home detention, and his commission of these crimes showed that the substance-abuse treatment Lowry received, which was the justification or his sentence modification, did not effect any lasting change in Lowry's behavior. We, therefore, conclude that the trial court did not abuse its discretion when it ordered Lowry to serve the entirety of his previously-suspended sentence.

IV. Credit Time

[29] Lowry contends that the trial court erred in its determination of the credit time he was to be awarded. Specifically, he asserts that the trial court erred in awarding his credit time because it failed to give him credit for the time he spent on home detention and that the trial court miscalculated his credit time for his incarceration prior to the disposition. Credit time is governed by statute, and trial courts generally do not have discretion in awarding credit time. *Niccum v. State*, 181 N.E.3d 993, 995 (Ind. Ct. App. 2021). On appeal, it is the defendant's burden to show that the trial court erred in its calculation and allocation of credit time. *Harding v. State*, 27 N.E.3d 330, 332 (Ind. Ct. App. 2015). Credit time is the sum of a person's accrued time, good-time credit, and educational credit. Ind. Code § 35-50-6-0.5. "Accrued time" is "the amount of time that a person is imprisoned or confined." *Id.* A person who is not a credit-

restricted felon and is imprisoned awaiting trial or sentencing for a crime other than a Level 6 felony or misdemeanor earns one day of good-time credit for every three days the person is imprisoned or confined awaiting trial for sentencing. Ind. Code §§ 35-50-6-3.1(c); 35-50-6-4(b).

[30] As for Lowry's challenge to the number of days he was incarcerated for his probation violation while awaiting disposition, the trial court found that Lowry had served 373 days prior to the disposition in the revocation case, which encompassed the time from December 1, 2020, the date the warrant for his probation revocation was served, and December 8, 2020, the day before the dispositional hearing. The trial court stated in its order that Lowry would receive credit for this time and good-time credit.

[31] Lowry claims the number should be 381 days, dating from his arrest on the new crimes on November 23, 2020. However, at the dispositional hearing, the trial court discussed with the parties whether the days Lowry was incarcerated between his November 23 arrest on the Cause No. F5-34 new crimes and the December 1 arrest on the probation violation warrant should be credited toward this case or the Cause No. F5-34 case, and the parties agreed that those days would be allocated to the Cause No. F5-34 case. Tr. Vol. II pp. 72–76. Therefore, Lowry was incarcerated between November 23, 2020, and December 1, 2020, only on the Cause No. F5-34 charges, and because he was not being held on this case until the probation violation warrant was served on December 1, that period of time was properly allocated to the Cause No. F5-34 case.

[32] As for Lowry's remaining argument, the State agrees that he is entitled to receive credit for the time he spent on home detention between September 16, 2019, and November 23, 2020. A person serving a sentence on home detention, whether ordered as a condition of probation or as part of a community-corrections program, is to receive credit for both accrued days and good-time credit. *See* Ind. Code §§ 35-38-2.5-5(d)-(f); 35-38-2.6-6(b), (c). However, in its disposition of this case, the trial court did not include Lowry's credit time for the time he spent on home detention from September 16, 2019, until the day prior to his arrest on November 23, 2020. Therefore, we conclude that this case should be remanded to so that the trial court can correct this error in Lowry's credit time.

[33] The State also points out that the amended abstract of judgment and the CCS docket entry erroneously list Lowry's sentence for the underlying Level 2 felony conviction as a ten-year sentence instead of a twenty-five-year sentence and maintains that Lowry's corrected credit time on remand must be subtracted from the original twenty-five-year sentence. We agree.

[34] The trial court's disposition order stated that Lowry was to serve "the balance of his original sentence" in the DOC, and it awarded him credit only for the time spent incarcerated prior to the disposition, and not for the approximately fourteen months he spent on home detention. Appellant's App. Vol. II p. 17. Both the docket entry on the CCS and the amended abstract of judgment issued after the revocation reflect that Lowry had been given a ten-year sentence on his Level 2 felony dealing conviction. *Id*. at 18, 51. The DOC's online offender

database also shows Lowry is now serving only a ten-year sentence on this conviction.[3] However, Lowry received a twenty-five-year sentence for his Level 2 felony conviction, and the length of the sentence was not changed when the sentence was modified. All of Lowry's credit time must be subtracted from a twenty-five-year sentence, and not from a ten-year sentence.

[35] We, therefore, remand to the trial court for a hearing at which the record will be corrected to show that the sentence Lowry has been ordered to serve is a twenty-five-year sentence and to reflect that Lowry should receive credit for the time spent on home detention in addition to the credit for the 373 days spent incarcerated prior to the disposition in this case.

Conclusion

[36] The trial court did not abuse its discretion when it admitted the evidence found in Lowry's home during the search and when it admitted the statements Lowry made to Deputy Hall and White. Sufficient evidence was presented to prove by a preponderance of the evidence that Lowry violated the conditions of his probation and community-corrections placement. The trial court did not abuse its discretion when it ordered Lowry to serve the entirety of his previously-suspended sentence. When it revoked Lowry's sentence, the trial court did not err in its calculation of the credit time to be awarded for Lowry's time

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[3] *See* DOC Offender Database, www.in.gov/apps/indcorrection/ofs/ofs (search under Lowry, Toby) (last visited Sept. 12, 2022).

incarcerated prior to the disposition in this case, but it did err when it failed to award him credit for the time he spent on home detention and in its entry on both the amended abstract of judgment and on the CCS where it stated Lowry's sentence for his Level 2 felony conviction was ten years instead of twenty-five years.

[37] Affirmed in part, reversed in part, and remanded with instructions.

Pyle, J., concurs.

Brown, J., concurs with separate opinion.

IN THE
COURT OF APPEALS OF INDIANA

Toby Wayne Lowry,
Appellant-Defendant,

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State of Indiana,
Appellee-Plaintiff.

Court of Appeals Case No.
22A-CR-346

Brown, Judge.

[38] I concur with the majority and write separately to state that on remand, if the trial court intended to order that the portion of Lowry's sentence to be executed be based on a ten-year term, it may correct the record accordingly. *See Sandlin v. State*, 823 N.E.2d 1197, 1198 (Ind. 2005) ("[A] trial court has the authority to order executed time following revocation of probation that is less than the length of the sentence originally imposed.").