MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dayshawn Mumford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 17, 2022

Court of Appeals Case No. 22A-CR-871

Appeal from the Marion Superior Court

The Honorable Shatrese M. Flowers, Judge

The Honorable James Snyder, Magistrate

Trial Court Cause No. 49G02-2008-F5-25369

May, Judge.

[1] Dayshawn Mumford appeals following the trial court's revocation of his placement in work release. Mumford contends the State did not present sufficient evidence to support the trial court's finding that Mumford violated the terms of his work release placement. We affirm.

Facts and Procedural History

[2] Pursuant to a plea agreement, Mumford plead guilty to three charges of Level 5 felony carrying a handgun without a license,[1] which were pending under three separate cause numbers, including 49G02-2008-F5-025369 ("Cause 25369"). The plea agreement provided Mumford's sentence in Cause 25369 would be a maximum of three years, with a cap of two years of executed time. The agreement also provided: "Should the Defendant violate the terms and conditions of his probation, the Court may order any or all of the suspended time to be executed." (App. Vol. II at 57) (emphasis removed). On November 17, 2020, the trial court imposed a two-year sentence in Cause 25369 and ordered Mumford be committed to Marion County Community Corrections to serve his sentence on home detention.

[3] On January 12, 2021, the State filed a notice of community corrections violation because Mumford had been arrested and charged with Level 6 felony

[1] Ind. Code § 35-47-2-1 (2017).

escape[2] and Class C misdemeanor operating a motor vehicle without ever receiving a license.[3] Mumford admitted the violation, and the trial court modified his placement to work release at the Duvall Residential Center ("DRC"). During the intake process, Mumford received a document listing the DRC's rules. Paragraph 2 stated: "You will follow directions given to you by Community Corrections staff. You will follow all rules and regulations in the Duvall Residential Center Resident Handbook." (State's Ex. Vol. I at 3.) Paragraph 10 provided: "By signing below, you understand and agree to follow these rules and are aware of the consequences for any violation." (*Id*.) Mumford signed the document and placed his initials next to each individual rule.

[4] Mumford also signed a form acknowledging he had been given information regarding the Prison Rape Elimination Act[4] ("PREA") and DRC's sexual abuse prevention plan. The form noted: "All of my questions regarding PREA have been answered." (*Id*. at 6.) It also explained: "I understand that the Indiana Department of Corrections [sic] maintains zero tolerance for all forms of sexual conduct." (*Id*.) Mumford also signed a form confirming his receipt of the DRC resident handbook and acknowledging his responsibility to read and understand the handbook. The form also provided: "I understand that if I have questions

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[2] Ind. Code § 35-44.1-3-4(b) (2014).

[3] Ind. Code § 9-24-18-1(a) (2016).

[4] 42 U.S.C. § 15601 et seq.

regarding anything listed in the Handbook, it is my responsibility to contact a Duvall Residential Center staff member for assistance." (*Id*. at 14.) The handbook outlined prohibited conduct, including sexual acts with a visitor, nonconsensual sexual acts, and sexual conduct between residents.

[5] On November 19, 2021, L.C., a DRC resident, reported to Samantha Moore, DRC's PREA coordinator, that earlier that morning he performed oral sex on Mumford. L.C. explained the conduct occurred during a prearranged meeting with Mumford in the DRC bathroom. L.C. explained he waited in the bathroom for Mumford to arrive and then the two went into a stall where L.C. performed oral sex on Mumford. After speaking with L.C., Moore reviewed surveillance footage. There was a short wall in front of the toilet that partially obscured the camera's view, but the footage showed Mumford enter a stall occupied by L.C., make "thrusting motions" with his hips, and leave the stall approximately one minute thereafter. (Tr. Vol. II at 36.)

[6] The State filed a notice of community corrections violation alleging Mumford violated the DRC's rules and regulations prohibiting sexual conduct. Mumford chose to contest the notice of violation, and the trial court set a hearing for March 24, 2022. Moore testified that engaging in oral sex was considered sexual conduct that violated the DRC rule prohibiting such conduct. The trial court found the State proved the violation by a preponderance of the evidence. The trial court then revoked Mumford's community corrections placement and ordered that he serve the remainder of his sentence in the Indiana Department of Correction.

Discussion and Decision

[7] Mumford argues the DRC rules did not prohibit consensual oral sex between residents and, therefore, the State presented insufficient evidence to revoke his placement at the DRC. Our standard of review following a trial court's decision to revoke placement in community corrections is well-settled:

> 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.

McQueen v. State, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007) (internal citations omitted).

[8] As our Indiana Supreme Court has explained: "A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a 'matter of grace' and a 'conditional liberty that is a favor, not a right.'" *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999) (quoting *Million v. State*, 646 N.E.2d 998, 1002 (Ind. Ct. App. 1995)). As a condition of his plea agreement, Mumford agreed to abide by the terms and conditions of his probation, and when Mumford entered the DRC, he agreed to abide by the

facility's rules. Plea agreements, and by extension terms of probation contemplated by such agreements, "are in the nature of contracts entered into between the defendant and the State." *Jackson v. State*, 29 N.E.3d 151, 154 (Ind. Ct. App. 2015). Thus, "[i]n construing the plea agreement, we are guided (though not strictly bound) by contract interpretation principles." *Berry v. State*, 10 N.E.3d 1243, 1247 (Ind. 2014). "The parties to a contract have the right to define their mutual rights and obligations, and a court may not make a new contract for the parties or supply missing terms under the guise of construing a contract." *Ochoa v. Ford*, 641 N.E.2d 1042, 1044 (Ind. Ct. App. 1994).

[9] Rule 216 of the DRC handbook's list of prohibited conduct states:

216	**Sexual Conduct** Engaging in any of the following: Sexual intercourse, as defined in this Administrative Procedure, with the consent of the other resident •Making a request, hiring, or coercing another person to have sexual contact •Having contact with or performing acts with an animal that would be sexual intercourse or sexual contact if with another individual •Clutching, exposing, fondling, or touching the resident's own intimate parts for the sexual arousal of the resident or others, whether clothed or unclothed, while observable by others.	114, 115, 204, 205, 206, 302

(State's Ex. Vol. I at 30.)

[10] Yet, despite Rule 216's statement that "sexual intercourse" is "defined in this Administrative Procedure," the term is not explicitly defined in the DRC handbook. (*Id.*) Mumford thus argues he was not on notice regarding what

behavior amounted to "sexual conduct" or "sexual intercourse" prohibited by Rule 216.[5] He contends:

> While Rule 216 is titled "sexual conduct," it does not explicitly prohibit all sexual conduct. Rather, Rule 216 specifically prohibits only those actions contained therein. One of those prohibited activities is "sexual intercourse," which the rule proclaims is defined within the "Administrative Procedure." Rule 216 does not say that "sexual conduct" is defined elsewhere in the rules. It was not alleged, nor was evidence presented, that Mumford violated the other provisions of Rule 216.

(Appellant's Br. at 8.)

[11] However, the PREA Offender Education Program form Mumford signed when he entered DRC informed him about the "zero tolerance" policy "for all forms of sexual conduct." (State's Ex. Vol. I at 6.) This acknowledgment undercuts Mumford's argument that some sexual conduct was intended to be excluded from Rule 216's prohibition. Nonetheless, we do not agree with Mumford's assertion that the only provision of Rule 216 Mumford was accused of violating was the prohibition against "sexual intercourse." Rule 216 also prohibited "[m]aking a request, hiring, or coercing another person to have sexual contact."

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[5] Unless explicitly defined in a contract, we will assign clear and unambiguous terms their plain and ordinary meaning. *See Reuille v. E.E. Brandenberger Const., Inc.*, 888 N.E.2d 770, 771 (Ind. 2008). We often rely upon the dictionary definition of a term to ascertain its plain and ordinary meaning. *Id*. The Merriam-Webster dictionary defines "sexual intercourse" as "heterosexual intercourse involving penetration of the vagina by the penis" and "intercourse (such as anal or oral intercourse) that does not involve penetration of the vagina by the penis[.]" (Perma | Sexual intercourse Definition & Meaning - Merriam-Webster). Thus, according to at least one dictionary, the plain meaning of "sexual intercourse" encompasses oral sex. Nonetheless, we decide this case on other grounds.

(*Id*. at 30.) Moore testified L.C. told her that Mumford engaged in oral sex with L.C. in the DRC bathroom, and Moore's review of security footage confirmed details of L.C.'s report. The footage showed L.C. enter the DRC bathroom and Mumford follow him inside the bathroom shortly thereafter. Mumford then entered a stall occupied by L.C. Mumford does not assert he was coerced into receiving oral sex. As Rule 216 prohibits requesting sexual contact, Mumford violated the rule when he and L.C. agreed to oral sex. Oral sex is clearly sexual contact, but if Mumford had any questions in this respect, it was his responsibility to ask DRC staff for clarification. (*Id*. at 14.) Consequently, we hold the State presented sufficient evidence that Mumford violated the terms of his placement at DRC by agreeing to engage in sexual contact with L.C. *See Patterson v. State*, 750 N.E.2d 879, 885 (Ind. Ct. App. 2001) (holding defendant knew the rules of the work release center in which he was placed and affirming trial court's decision to revoke defendant's placement).

Conclusion

[12] Mumford agreed to abide by the rules and regulations of the DRC while on work release. This included his acknowledgment of the Indiana Department of Correction's zero-tolerance policy for sexual conduct, and the DRC's rules and regulations, including rules prohibiting sexual acts. Yet, Mumford nonetheless chose to participate in oral sex. Because the State presented sufficient evidence

that Mumford violated the terms of his placement at DRC, we affirm the trial court.

[13] Affirmed.

Crone, J., and Weissmann, J., concur.