

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Corey M. Webb,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 4, 2023

Court of Appeals Case No.
22A-CR-3001

Appeal from the
Madison Circuit Court

The Honorable
Mark K. Dudley, Judge

Trial Court Cause No.
48C06-2001-CM-136

Memorandum Decision by Senior Judge Robb
Judges Vaidik and Pyle concur.

Robb, Senior Judge.

Case Summary

- [1] Corey M. Webb appeals from the trial court's order concluding that he had violated the terms and conditions of probation. He claims that: (1) the written sanctions order should be corrected because it conflicts with the court's oral pronouncement; and (2) the court abused its discretion by making Webb's placement determination instead of delegating that decision to the Madison County Community Corrections Continuum of Sanctions Board. We conclude that Webb is entitled to have his written sanctions order accurately reflect the court's decision and remand the matter to the trial court to enter a corrected written sanctions order. However, we further conclude that the trial court did not abuse its discretion by making Webb's placement determination, and we affirm the court's decision in that regard. Thus, we affirm and remand.

Facts and Procedural History

- [2] Webb was charged with Level 5 felony domestic battery resulting in bodily injury to a person less than fourteen years of age and Level 6 felony battery in cause number 48C06-2001-F5-66 (F5-66). Days later, Webb was charged with Class A misdemeanor invasion of privacy in cause number 48C06-2001-CM-136 (CM-136). Webb resolved those charges by entering into a plea agreement providing that he would plead guilty as charged under both cause numbers, and the State would recommend a sentence of three years suspended to formal probation. The court accepted the plea agreement and imposed a sentence

under CM-136 of one year suspended to probation to be served consecutively to the sentence imposed in F5-66.

- [3] The conditions of Webb's probation included that he was to submit himself to substance abuse evaluation and to fully comply with all recommendations, to abstain from consuming alcohol or illegal drugs of any type, to obey all applicable laws, to avoid places where illegal drugs are being used or possessed, to submit to drug screens, and to notify the probation department of any change of address.
- [4] The probation department filed a notice alleging that Webb had violated the terms of his probation in CM-136 in the following ways: (a) committed a new criminal offense of driving with a suspended license on August 22, 2022; (b) committed the new criminal offenses of possession of a narcotic drug, possession of a controlled substance, driving while suspended, operating a vehicle while intoxicated endangering a person (as a Class A misdemeanor), operating a vehicle without financial responsibility, and operating a vehicle while intoxicated endangering a person (as a Level 6 felony) on September 8, 2022; (c) committed a new criminal offense of driving while suspended on August 30, 2022; (d) committed a new criminal offense of possession of methamphetamine on August 30, 2022; (e) failed to notify his probation officer of his change of address; (f) failed to participate in a substance abuse evaluation and provide verification of his participation; (g) failed to abstain from the use of alcohol or illegal drugs as evidenced by a positive drug screen on August 30,

2022; and (h) failed to abstain from the use of alcohol or illegal drugs as evidenced by a positive drug screen on August 21, 2022.

[5] At the conclusion of the evidentiary hearing on the probation violations, the court found that the State met its burden “as to A, parts of B[,] specifically counts I, II and IV,” and “E through F” Tr. Vol. I, p. 41. The court further concluded, “There is [no] evidence on C & D[.]” *Id.* at 40.

Nevertheless, the court’s written sanctions order includes the finding that Webb “violated conditions of Probation as to Paragraph 6(a) thru 6(h).” Appellant’s App. Conf. Vol. II, p. 15. As for sanctions, the court ordered Webb to participate in Madison County’s Continuum of Sanctions program starting with work release. *Id.* Webb now appeals.

Discussion and Decision

A. Incorrect Written Findings

[6] Initially, we observe the State does not contest Webb’s assertion that the court’s oral statement and written sanctions order differ. Instead, the State contends that Webb has suffered no prejudice to a substantial right from the discrepancy because the court could revoke his probation upon evidence of a single probation violation, and the court found several.

[7] “When oral and written sentencing statements conflict, we examine them together to discern the intent of the sentencing court.” *Skipworth v. State*, 68 N.E.3d 589, 593 (Ind. Ct. App. 2017). “We may remand the case for correction of clerical errors if the trial court’s intent is unambiguous.” *Id.* (citing *Willey v.*

State, 712 N.E.2d 434, 445 n.8 (Ind. 1999) (“Based on the unambiguous nature of the trial court’s oral sentencing pronouncement, we conclude that the Abstract of Judgment and Sentencing Order contain clerical errors and remand this case for correction of those errors.”)).

[8] Here, the court’s oral pronouncement unambiguously details which allegations the State carried its burden of establishing during the evidentiary hearing on the notice of probation violation. And the State concedes that if Webb is entitled to relief, such relief is limited to the correction of the written order. We conclude that Webb is entitled to relief and remand this matter to the trial court for the entry of a corrected written sanctions order, mirroring what it found at the end of the evidentiary hearing as reflected in the transcript of the hearing.

B. No Abuse of Discretion in Revocation Sanction

[9] As our Supreme Court said in *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007),

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court’s sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

(internal citations omitted).

[10] Here, Webb claims that the court abused its discretion by returning him to probation because Webb “did not ask for a return to probation[;]” instead, he “asked that revocation be to COS and that it be left up to that board to select [Webb’s] program.” Appellant’s Br. p. 8. Put a different way, Webb claims the court abused its discretion by failing to accept his placement request when determining the sanction for his numerous probation violations. We disagree.

[11] Webb has not provided us with legal authority to support his position. And the authority he supplies, includes the provision, “When Courts sentence an offender to COS, the Judge of the referring court may determine beginning placement with the COS program or directly into a specific COS program component depending upon offender history, thus bypassing the COS Board’s placement review process.”

www.madisoncounty.in.gov/departments/community-corrections

[<https://perma.cc/DE4V-VQKE>] (last visited September 27, 2023). Thus, even the source he cites provides that the trial court may do exactly what it did here—place the defendant directly into a program. Further authority for the court’s decision can be found in Indiana Code section 35-38-2-3(h)(3) (2015) (the court may “[o]rder execution of all or part of the sentence that was suspended at the time of the initial sentencing.”). Therefore, we conclude the court did not abuse its discretion in sanctioning Webb for his probation violation.

Conclusion

[12] In light of the foregoing, we remand this matter to the trial court to enter a corrected written sanctions order. However, we affirm the trial court's sanction decision.

[13] Affirmed in part, and remanded.

Vaidik, J., and Pyle, J., concur.