

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Richard R. Beck,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 22, 2024

Court of Appeals Case No.
23A-CR-2267

Appeal from the Marion Superior Court
The Honorable Charles F. Miller, Judge

Trial Court Cause No.
49D29-2101-F4-2853

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] Richard R. Beck appeals the revocation of his placement in the Marion County Community Corrections Program (Community Corrections), claiming that the trial judge should have recused himself because he “expressed a personal interest in the outcome of the proceedings.” *Appellant’s Brief* at 4. Beck maintains that the trial judge’s comments regarding his duty to protect the staff at a Community Corrections facility from threats and violence violated Beck’s right to due process.

[2] We affirm.

Facts and Procedural History

[3] On September 10, 2021, Beck pleaded guilty to unlawful possession of a firearm by a serious violent felon, a Level 4 felony, and to escape, a Level 6 felony, pursuant to a written plea agreement with the State. The agreement provided for a fixed sentence of six years, with four years executed and two years suspended. Beck was ordered to serve two years in the Indiana Department of Correction (DOC) and two years in Community Corrections, one on work release and the other on home detention with GPS monitoring. The trial court further imposed a two-year suspended sentence and a one-year probationary term to satisfy the remainder of the six-year sentence.

[4] In December 2022, Beck began serving the Community Corrections portion of his sentence at the Duvall Residential Center (Duvall) in Indianapolis. Within the first two months, Beck committed two violations that resulted in in-house sanctions. Thereafter, on May 27, 2023, Beck threatened and harassed laboratory staff members during a routine drug screen. Beck yelled to one of the employees: “Ni**er I’ll beat your ass, ni**er I’ll kill you, ni**er don’t let me catch you outside.” *Transcript Vol. II* at 14. Following that incident, Community Corrections and the Marion County Probation Department sought to revoke Beck’s placement at Duvall, citing the violation of Community Corrections rules, i.e., the threatening behavior that he made toward staff, as the basis for the revocation.

[5] During the revocation hearing on August 30, 2023, Beck admitted the violation. At that time, Beck had 390 days remaining in Community Corrections that included thirty-five days on work release and one year on home detention. At some point during the hearing, the trial judge commented that he had a duty to safeguard and protect Community Corrections staff members, and he regarded Beck’s conduct towards the employees at Duvall as “very serious.” *Id.* Beck did not object to the judge’s statements.

[6] The trial court rejected Beck’s request for early home detention and twenty-eight days of inpatient treatment at a drug and alcohol treatment facility, revoked Beck’s remaining days in Community Corrections, and sentenced him to executed time in the DOC along with the one-year probationary period.

[7] Beck now appeals.

Discussion and Decision

[8] At the outset, we note that Beck is not challenging the trial court's discretionary authority to revoke the 390 days in Community Corrections placement and order executed time at the DOC.¹ Rather, Beck claims that he was denied his right to due process under the Fourteenth Amendment to the United States Constitution because the trial judge's comments at the revocation hearing concerning the duty to safeguard and protect staff from threats unfairly prejudiced him. Beck, however, lodged no objection to the trial judge's statements. Thus, the issue is waived for appellate review. *See, e.g., Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) (observing that grounds not raised in the trial court are not available on appeal).

[9] To avoid waiver, Beck must show fundamental error. *See Ryan v. State*, 9 N.E.3d 663, 558 (Ind. 2014). The fundamental error exception 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." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010).

¹ Indeed, proof of a single violation is sufficient to warrant a revocation. *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011), *trans. denied*. And Ind. Code § 35-38-2.6-5(a) authorizes a trial court to revoke a defendant's placement in Community Corrections and order executed time at the DOC.

[10] Notwithstanding Beck's contention, it is presumed that a judge is not biased or prejudiced in the matters that come before the court. *Flowers v. State*, 738 N.E.2d 1051, 1060 (Ind. 2000). A judgment will not be reversed unless the record shows actual bias and prejudice against the defendant. *Id.* The test for determining whether a judge should recuse because of personal bias against a defendant is "whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality." *James v. State*, 716 N.E.2d 935, 940 (Ind. 1999).

[11] At the revocation hearing, the trial judge observed that he had a duty to safeguard Community Corrections and probation personnel, and that he took Beck's violent threats to "beat" and "kill" employees "very seriously." *Transcript Vol. II* at 18-19. In light of those comments, Beck is assuming that the trial judge was biased and prejudiced against him because he was ordered to serve the remainder of his Community Corrections sentence at the DOC. We note, however, that a trial court can take a duty to protect personnel seriously and be impartial in imposing a sanction. *See, e.g., Garland v. State*, 788 N.E.2d 425, 433 (Ind. 2003) (demonstrating prejudice that calls for a change of judge must be established from personal, individual attacks on a defendant's character, or otherwise). And an adverse ruling alone is not sufficient to show bias or prejudice. *Hart v. State*, 889 N.E.2d 1266, 1273 (Ind. Ct. App. 2008). Put another way, prejudice is not derived from judicial rulings. *Garland*, 788 N.E.2d at 433.

[12] It is apparent here that the trial judge's comments indicated that the threats Beck made against Community Corrections personnel warranted a serious sanction. And as the judge observed, Beck would have been rewarded for making the threats had his request for early release to a treatment center been granted. Thus, when considering the trial judge's comments at face value, no reasonable basis existed for doubting impartiality, and there was no reason for the judge to have recused himself. As a result, we reject Beck's claim that his right to due process was violated and affirm the sanction imposed for the Community Corrections violation.

[13] Judgment affirmed.

Bradford, J. and Felix, J., concur.

ATTORNEYS FOR APPELLANT

Talisha R. Griffin
Indianapolis, Indiana

Victoria Bailey Cassanova
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Jodi Kathryn Stein
Deputy Attorney General
Indianapolis, Indiana