

STATEMENT OF THE CASE

Appellant-Respondent, Jesse B. Scarsbrook (Scarsbrook), appeals the trial court's revocation of his placement in community corrections.

We affirm.

ISSUE

Scarsbrook raises one issue on appeal, which we restate as follows: Whether the State produced sufficient evidence to prove by a preponderance of the evidence that he violated the terms of his placement in community corrections.

FACTS AND PROCEDURAL HISTORY

On September 25, 2008, the State filed an Amended Information charging Scarsbrook with robbery, a Class B felony, Ind. Code § 35-42-5-1, and criminal confinement, a Class C felony, I.C. § 35-42-3-3. On March 12, 2009, Scarsbrook pled guilty to robbery as a Class B felony pursuant to a written plea agreement in which the State agreed to dismiss his criminal confinement charge. Subsequently, on August 26, 2010, the trial court sentenced Scarsbrook to eight years, with two years suspended, and awarded Scarsbrook 183 days credit. In regard to Scarsbrook's six year executed sentence, the trial court ordered that Scarsbrook serve the first three years in the Indiana Department of Correction (IDOC) and the second three years in community corrections.

Scarsbrook served the first half of his executed sentence in the IDOC and began to serve the second half of his executed time in community corrections on March 23, 2010. On August 10, 2010, the State filed a notice of community corrections violation, claiming that

Scarsbrook had violated the terms and conditions of his placement in community corrections. Specifically, the State alleged that Scarsbrook had failed to: (1) comply with conditions of an employment pass; (2) submit a paycheck as required by the Riverside Residential Center (RRC) policy; and (3) comply with RRC rules. On August 26, 2010, the trial court held a hearing on the notice of violation.

At the hearing, the State presented evidence that the conditions of Scarsbrook's placement in RRC were that he "get employment within 15 days, submit a paycheck for policy with a paycheck stub and [] go to work and report back to [RRC]." (Transcript p. 5). According to Jack Zakula (Zakula), a case manager at RRC, Scarsbrook did not report to work on August 8, 2010, and accumulated eleven hours of unemployed time. In addition, Zakula also noted that Scarsbrook received a "write-up" on June 30, 2010, for failure to turn in a paycheck. (Tr. p. 7). After receiving the write-up, Scarsbrook failed to remit a paycheck to RRC on July 7, 2010; July 9, 2010; July 16, 2010; July 23, 2010; and July 30, 2010.

During the hearing, Zakula also reported that Scarsbrook violated RRC rules on two occasions. First, on July 26, 2010, RRC kitchen staff instructed Scarsbrook twice to return to his bunk for head count. Scarsbrook ignored the orders and walked to the dining room to buy a soda. Then, on August 2, 2010, Scarsbrook interfered with RRC's head count and staff briefing at 7:15 a.m. and was instructed to return to his room immediately. Scarsbrook left, "upset with vulgarity." (Tr. p. 8).

At the conclusion of the evidence, the trial court found that Scarsbrook had violated the terms and conditions of his placement in community corrections and sentenced him to serve the balance of his executed sentence in the IDOC, followed by probation.

Scarsbrook now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

For purposes of 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). We take this approach because we have determined that the difference between the two is “insignificant.” *Pavey v. State*, 710 N.E.2d 219, 220-21 (Ind. Ct. App. 1999). Both are alternatives to commitment to the IDOC, and both are made at the discretion of the trial court. *Holmes*, 923 N.E.2d at 482. A placement in either is a “matter of grace” and a “conditional liberty that is a favor, not a right.” *Id.* (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)).

Accordingly, a community corrections hearing is civil in nature like a probation hearing, and the State need only prove the alleged violations by a preponderance of the evidence. *See Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). On appeal, we will consider all the evidence most favorable to the trial court’s judgment without reweighing that evidence or judging the credibility of the witnesses. *Id.* While a community corrections placement revocation hearing has certain due process requirements, it is not equivalent to an adversarial criminal proceeding. *Holmes*, 923 N.E.2d at 482. The court’s inquiry is narrow, and its procedures are more flexible. *Id.*

Here, Scarsbrook argues that he presented evidence at the hearing that negated Zakula's testimony regarding his failure to appear at work on August 8, 2010. Scarsbrook notes that Zakula's testimony was not based on direct knowledge; instead, Scarsbrook's violation was reported by a man named "Mr. Armstrong," who was a supervisor at Work Force where Scarsbrook was employed. (Tr. p. 6) Scarsbrook argues that Mr. Armstrong could not have reported that he failed to come to work because Scarsbrook presented a witness at the hearing who testified that no one by the name of Armstrong worked at Work Force.

In this argument, Scarsbrook essentially asks us to reweigh evidence, which we cannot do on appeal. *Monroe*, 899 N.E.2d at 691. When we consider the evidence without reweighing it, it is clear that the State presented sufficient evidence to prove by a preponderance that Scarsbrook failed to appear at work. Accordingly, we conclude that the trial court did not abuse its discretion in determining that Scarsbrook violated the terms of his placement in community corrections.

Scarsbrook also makes two other arguments: that the State did not present evidence that he received paychecks on the dates for which he was accused of failing to remit his paychecks, and that Scarsbrook's behavior towards RRC staff violated any rules of the RRC. We will not address these arguments here. In the past, this court has characterized probation as "a matter of grace" and a "conditional liberty that is a favor, not a right." *Holmes*, 923 N.E.2d at 482. As such, a violation of *any* condition of probation is sufficient to sustain a probation revocation. *Woods v. State*, 892 N.E.2d 637, 639-40 (Ind. 2008) (emphasis added).

Because we have determined that Scarsbrook violated his placement in community corrections by failing to attend work, we do not need to address the remainder of Scarsbrook's arguments.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly revoked Scarsbrook's placement in community corrections.

Affirmed.

DARDEN, J., and BARNES, J., concur.