

STATEMENT OF THE CASE

Appellant-Respondent, Edward P. Barsh (Barsh), appeals the trial court's revocation of his home detention.

We affirm.

ISSUE

Barsh raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion when it revoked Barsh's community corrections placement in home detention and imposed the balance of his suspended sentence.

FACTS AND PROCEDURAL HISTORY

On September 20, 2001, the State filed an Information charging Barsh with burglary, a Class B felony, and theft, a Class D felony. On March 26, 2008, after entering into a plea agreement, Barsh pled guilty to burglary, as a Class C felony, and theft, a Class D felony. The trial court sentenced Barsh to concurrent terms of six years on the burglary charge and two years on the theft charge, with two years executed on home detention and four years suspended.

On July 24, 2009, while still on home detention, Barsh was employed by Reese Wholesale, the parent company of Construction Transportation, Inc. (CTI), located in New Albany, Indiana. His position consisted of loading purchases from the warehouse into trucks for delivery to various contractors. That day, Lance Ater (Ater), a delivery driver for CTI, observed Barsh loading a total of fifty-six bundles of roofing shingles into two pick-up trucks, *i.e.*, a truck owned by Randy Pruitt and Barsh's own truck. After discussing his

observation with another employee and checking the invoice, Ater determined that the contractor had only purchased thirty bundles of shingles. Ater reported his finding to Michael Colpetzer (Colpetzer), the branch manager. Colpetzer checked the inventory and established that it was exactly twenty-six bundles short. After confronting Barsh, Colpetzer fired him. On August 27, 2009, the State filed an Information charging Barsh with a Class D felony theft.

Based on this new charge, the State filed a petition to terminate Barsh's participation in home detention on October 21, 2009. On September 7, 2010, the trial court conducted a hearing on the State's petition and concluded that Barsh has violated the terms of his home detention. The trial court imposed the balance of Barsh's suspended sentence, to be executed at the Department of Correction (DOC).

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

DISCUSSION AND DECISION

Barsh contends that the trial court abused its discretion when it revoked his placement in home detention. Specifically, Barsh claims that the State failed to prove by a preponderance of the evidence that he had committed the theft of the roofing shingles and thus had violated the conditions of his home detention placement.

For purposes of appellate review, we treat a hearing on a petition to revoke placement in a community corrections program the same as we do a hearing on a petition to revoke probation. *Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009). Both probation and community corrections programs serve as alternatives to commitment to the DOC and both

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. *Id.* Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right. *Id.*

Our standard of review of an appeal from the revocation of a community corrections placement mirrors that for revocation of probation. *Id.* A probation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Id.* We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of the witnesses. *Id.* If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Id.*

An arrest standing alone will not support the revocation of probation. *Tillberry v. State*, 895 N.E.2d 411, 417 (Ind. Ct. App. 2008). Evidence must be presented from which the trial court could reasonably conclude that the arrest was appropriate. *Id.* In other words, the State has to prove by a preponderance of the evidence that Barsh knowingly or intentionally exerted unauthorized control over the shingles of Reese Wholesale, with intent to deprive Reese Wholesale of any part of its value or use. *See* Ind. Code § 35-43-4-2.

During the hearing on the State's petition to revoke probation, the trial court heard testimony from Ater establishing that he saw Barsh load a total of fifty-six bundles of shingles into a contractor's truck and onto Barsh's truck, whereas the invoice only indicated payment of thirty bundles of shingles. After being notified, Colpetzer determined that the inventory was exactly twenty-six bundles short.

In support of his argument that the State failed to present sufficient evidence, Barsh refers to Ater's testimony that Barsh had slept with Ater's girlfriend. With this argument, Barsh attempts to infer that Ater is testifying out of some sort of revenge. However, Ater also stated that he did not find this out "until well after the facts" of observing Barsh loading the extra bundles of shingles unto two trucks. (Transcript p. 17). Although Barsh testified at trial and informed the court that he was innocent, the trial court explicitly declined to credit his testimony. Specifically, the trial court concluded

This is not something you can talk yourself out of. Unfortunately for you, I've come to the, pretty much the same conclusion that your boss came to as you got credible people who say they saw you taking bundles of, of roofing that, that you hadn't paid for. That, and then your boss at least had the good sense to kind of not just take their word for it, even though he said they were credible employees, he did some counting himself. The number is substantial. It doesn't help of course that you lack credibility yourself because of the prior convictions for theft and burglaries. That [a]ffects your credibility today. (Tr. p. 90).

In sum, in light of the evidence before us, we find that the trial court properly concluded that, based on a preponderance of the evidence, Barsh committed a theft while on home detention.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it revoked Barsh's community corrections placement in home detention and imposed the balance of his suspended sentence.

Affirmed.

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