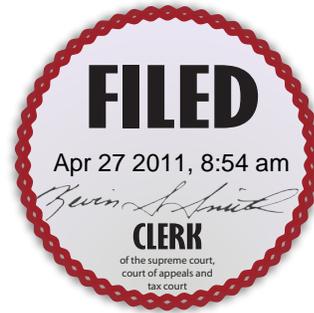


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEROME TAYLOR,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-1009-CR-551

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0904-FD-40101

April 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jerome Taylor (“Taylor”) appeals the trial court’s revocation of his placement in the Marion County Community Corrections Work Release Program and order to serve the balance of his sentence in the Department of Correction (“DOC”). We affirm.

Issue

Taylor presents two issues for our review, which we restate as:

- I. Whether the State presented sufficient evidence to support the revocation of his placement in Community Corrections; and
- II. Whether his Fifth Amendment right against self-incrimination was violated by the trial court’s use of a letter he wrote to the court.

Facts and Procedural History

On June 22, 2010, after violating the terms of his probation as part of his plea agreement sentence for Battery and Possession of Marijuana, Taylor was ordered to serve 365 days in the Marion County Community Corrections work release program. On July 19, 2010, Taylor received a medical pass to visit Wishard Hospital after complaining of high blood pressure and symptoms of congestive heart failure. He left the Duvall Residential Center at 9:30 a.m. and checked in by telephone at 2:30 p.m., 3:38 p.m., 5:38 p.m., and 6:50 p.m. He returned to the Duvall Center at 9:48 p.m. that night. Taylor received another medical pass two days later on July 21, 2010. On that day, he left at 11:22 a.m., called in at 4:47 p.m., 6:44 p.m., 7:50 p.m., 9:26 p.m., and 10:18 p.m., and returned to the Duvall Center at 10:56 p.m. that night.

On July 23, 2010, Taylor approached Patricia Montgomery (“Montgomery”) of the

Duvall Center concerning his health issues and again requested a medical pass to visit Wishard. Because Taylor had requested two passes in the previous two days, Montgomery investigated, and testified that she called Wishard Hospital and spoke with the head nurse for the emergency room. The nurse reported that on July 19, 2010, Taylor checked into Wishard at 2:32 p.m. and checked out at 6:33 p.m. The nurse reported that on July 21, he checked in at 3:08 p.m. and checked out at 6:18 p.m.

On July 23, 2010, Marion County Community Corrections filed a Notice of Community Corrections Violation alleging that Taylor violated the terms of his placement because he violated the terms and conditions of his medical passes on July 19, 2010, and July 21, 2010. The trial court held a hearing on the alleged violation on August 17, 2010, revoked Taylor's placement in community corrections, and ordered that he serve the balance of his sentence in the DOC. He now appeals.

Discussion and Decision

Standard of Review

For the purposes of appellate 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. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction ("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 is a "matter of grace" and a "conditional liberty that is a

favor, not a right.” Id. (quoting Brooks v. State, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998)).

The hearing on a revocation of a community corrections placement is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. McQueen v. State, 862 N.E.2d 1237, 1242 (Ind. Ct. App. 2007). We consider all the evidence most favorable to the judgment of the trial court, and do not reweigh the evidence or judge the credibility of witnesses. Id. If there is substantial evidence of probative value to support the court’s conclusion that the defendant has violated any terms of his placement, we will affirm the court’s decision to revoke placement. Id.

The Notice of Community Corrections violation alleged that Taylor had violated the terms of his placement by violating the terms and conditions of his medical passes on July 19, 2010, and July 21, 2010. Specifically, it alleged that Taylor accrued a total of sixteen hours and twenty-six minutes of unaccounted time over both days. At his revocation hearing, Mr. Ben Sandman (“Sandman”), a team leader for case managers at Marion County Community Corrections, testified that on July 19, 2010, Taylor was released from the Duvall Residential Center at 9:30 a.m., checked in by telephone at 2:30 p.m., 3:38 p.m., 5:38 p.m., and 6:50 p.m., and returned to the Duvall Center at 9:48 p.m. Sandman testified that on July 21, 2010, Taylor checked out at 11:22 a.m., called in at 4:47 p.m., 6:44 p.m., 7:50 p.m., 9:26 p.m., and 10:18 p.m., and returned to the Duvall Center at 10:56 p.m.

Montgomery testified that Taylor checked into Wishard on July 19 at 2:32 p.m. and checked out at 6:33 p.m., and checked into Wishard on July 21 at 3:08 p.m. and checked out at 6:18 p.m. She explained that there was a four hour discrepancy between the time he left

the Duvall Center and the time he checked into Wishard, and between the time he left Wishard and the time he returned to Duvall. The testimony of Sandman and Montgomery was sufficient for the court to conclude that Taylor had violated the terms of his placement. His arguments to the contrary ask us to reweigh the evidence and judge witness credibility, which we will not do. McQueen, 862 N.E.2d at 1242.

Fifth Amendment Right Against Self-Incrimination

Taylor also argues that the court violated his Fifth Amendment right against self-incrimination by its use of a letter he wrote the court. He maintains that his right was abridged when “the trial court held [his] silence or failure to mention certain facts testified to at the hearing against him because they were not asserted in his letter to the Court.” Appellant’s Br. p. 8. In other words, according to Taylor, the trial court unconstitutionally weighed his letter’s silence on certain facts that came to light at trial in reaching its decision to revoke his placement.

“The Fifth Amendment, in relevant part, provides that no person ‘shall be compelled in any criminal case to be a witness against himself.’” Minnesota v. Murphy, 465 U.S. 420, 426 104 S. Ct. 1136, 1141 (1984). Moreover, “it has long been held that the privilege against self-incrimination not only applies to a defendant at a criminal trial but also to a person in any other proceedings, civil or criminal, formal or informal.” Bussberg v. State, 827 N.E.2d 37, 41 (Ind. Ct. App. 2005), trans. denied. However, in a setting that is civil in nature such as the placement revocation hearing here, the statements the privilege protects are those which “might incriminate [defendant] in *future criminal proceedings*.” Id. (emphasis

supplied). In other words, Taylor may not assert his Fifth Amendment right in defending against an alleged community corrections violation, which is precisely what he attempts to do here. See id. (holding that defendant could not assert his Fifth Amendment right in defending against an alleged probation violation). Taylor voluntarily wrote and submitted his letter; the court was free to consider it in reaching its decision.

Conclusion

“Alternative sentences such as probation and community corrections serve the humane purposes of avoiding incarceration and of permitting the offender to meet his financial obligations.” Cox, 706 N.E.2d at 550. “But for sentencing alternatives to be a viable option for Indiana judges, judges must have the ability to move with alacrity to protect public safety when adjudicated offenders violate the conditions of their sentences.” Id. The State presented sufficient evidence that Taylor twice abused the medical leave privileges of his community corrections placement, which is already a “matter of grace.” Id. Nor was Taylor’s Fifth Amendment right against self-incrimination abridged by the proceedings. Consequently, we find no error in the trial court’s decision to revoke Taylor’s placement in community corrections.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.