

STATEMENT OF THE CASE

Appellant-Respondent, Rodney A. Covington (Covington), appeals the trial court's revocation of his work release and imposition of the balance of his suspended sentence.

We affirm.

ISSUE

Covington raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion when it revoked Covington's work release and imposed the balance of his suspended sentence.

FACTS AND PROCEDURAL HISTORY

On December 18, 2006, Travis Keeney (Keeney) drove Covington to Dover Street in Anderson, Indiana. Keeney saw Covington break into a residence and take items out of the house. When confronted by officers of the Anderson Police Department, Covington initially lied and denied any involvement. Eventually, he admitted that he had some of the stolen items at his house. Still later, he confessed to the burglary, noting that he was desperate for money. Covington told the officers that he broke the back glass doors with a hammer. He stated that, at the time of the burglary, he was armed with a .38 handgun, which the officers later recovered from his residence.

The following day, the State filed an Information in Cause No. 48D03-0910-FB-360 (Cause 360), charging Covington with Count I, burglary, a Class B felony, and Count II, theft, a Class D felony. On May 14, 2007, Covington pled guilty as charged and on September 10, 2007, he was referred to drug court. However, he failed to report for drug

court on September 12, 2007 and again on September 26, 2007. On November 12, 2007, drug court accepted Covington into its program after a hearing. On June 9, 2008, Covington voluntarily withdrew from drug court. Accordingly, the trial court sentenced him to concurrent terms of ten years on Count I, with six years on work release and four years suspended and to two years on Count II.

On February 26, 2009, the State filed a petition to revoke Covington's work release privileges claiming that he had absconded from work release on February 24, 2009. Thereafter, on April 21, 2009, the State filed an Information in Cause No. 48D03-0905-FC-361, charging Covington with failure to return to lawful detention, a Class D felony. On June 22, 2009, the trial court held a hearing finding that Covington violated the terms of probation and returned him to work release. Additionally, he pled guilty to failure to return to lawful detention and was sentenced to eighteen months with six months executed on work release and the remaining twelve months suspended to probation. This sentence was ordered to be served consecutively to the underlying Cause 360.

On September 11, 2009, the State filed a second petition to terminate work release in Cause 360. On November 3, 2009, the State filed another petition to terminate work release, claiming Covington tested positive for marijuana and that he had absconded for nearly twenty-four hours. On November 23, 2009, Covington admitted the violation and requested evaluation for acceptance in the mental health court.

Covington was accepted into the mental health court on December 28, 2009. On March 8, 2010, the mental health court terminated Covington's participation because he had

absconded from work release. On March 29, 2010, the trial court conducted a hearing on the State's petition to terminate Covington's work release, which Covington had admitted to on the November 23, 2009 hearing. At that hearing, Covington's attorney requested additional time because he wanted to subpoena witnesses. The trial court granted the request for more time. On May 24, 2010, the trial court conducted an evidentiary hearing. On May 26, the State filed another notice of violation of suspended sentence, alleging a violation of work release rules. The following day, on May 27, 2010, the trial court conducted a hearing on the State's notice. After a hearing on June 21, 2010, which incorporated the evidence presented on May 24, 2010, the trial court ordered Covington to serve the remainder of his sentence at the Department of Correction (DOC).

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

DISCUSSION AND DECISION

Covington contends that the trial court abused its discretion when it revoked his placement on work release. Specifically, Covington claims that he was provided insufficient due process. In essence, Covington alleges that he had no reason to know that his failure to successfully complete the mental health court would subject him to revocation of his probation.

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.*

While a community corrections placement revocation hearing has certain due process requirements, it is not to be equated with an adversarial criminal proceeding. *Holmes v. State*, 923 N.E.2d 479, 482 (Ind. Ct. App. 2010). Rather, it is a narrow inquiry, and its procedures are to be more flexible. *Id.* Because a probation revocation does not deprive a defendant of his absolute liberty, but only his conditional liberty, he is not entitled to the full due process rights afforded a defendant in a criminal proceeding. *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. Generally, due process in the probation context includes:

- (a) written notice of the claimed violations of probation;
- (b) disclosure to the probationer of evidence against her;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence;
- (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- (e) a neutral and detached hearing

body; and (f) a written statement by the factfinder as to the evidence relied on and reasons for revoking probation.

Id. See also *Gosha v. State*, 931 N.E.2d 432 (Ind. Ct. App. 2010).

On September 11, 2009, the State filed a petition to terminate Covington's placement on his work release. On November 23, 2009, the trial court conducted a hearing on the State's petition during which Covington pled guilty to the allegation but requested evaluation for acceptance in the mental health court. The trial court approved the request, and following evaluation, the mental health court accepted Covington into its program. However, on March 8, 2010, the mental health court terminated Covington from its program because he "failed to comply with the [m]ental [h]ealth [c]ourt [p]rogram and absconded from [w]ork [r]elease." (Appellant's App. p. 31).

Due to this termination, the trial court set the matter for a review hearing on March 29, 2010. During this hearing, the following exchange occurred:

[TRIAL COURT]: Petition to terminate work release. Okay.

[STATE]: Actually, Judge, that has already been admitted to on November 23rd of 2009, after he had admitted, [Covington] requested acceptance - - or evaluation of [m]ental health [c]ourt. He had been evaluated and was denied. So, I think we're here for a review or [] sanctions. We here for sanctions?

[DEFENSE]: Judge, we are. I know, [Covington] had, in just speaking with him intended to - - wanted to subpoena some witnesses that has not been done. He just informed me. So we could use today as a review and maybe set it off for another sanctions hearing.

(Transcript p. 18). The State consented and the trial court set the hearing for May 24, 2010.

During the evidentiary hearing on May 24, 2010, the State did not present any witnesses—only Covington called witnesses who testified to his time at the mental health court and the reasons for his termination therein. Contrary to Covington’s claim that he was not notified that the evidence which was going to be presented at the hearing “focused solely on [his] actions since being placed in the [m]ental [h]ealth court,” the record clearly discloses that it was Covington himself who subpoenaed the witnesses and elicited testimony from them regarding these actions. (*See* Appellant’s Br. p. 9). As such, Covington made his mental health the subject of the hearing and cannot now be heard to complain that “[n]one of this evidence was disclosed to [him] prior to the hearing.” (Appellant’s Br. p. 9). During this hearing, it also became clear that instead of taking advantage of the opportunities and leniency offered by the trial court, Covington absconded from work release, which was a violation of the terms the mental health court program, a violation of his work release, and a violation of his sentence.

On May 27, 2010, the trial court conducted an initial hearing on the State’s notice of violation of suspended sentence which was filed the day before. On June 21, 2010, after another hearing in which Covington participated and in which the trial court incorporated the evidence presented during the May 24, 2010 hearing, the trial court sentenced Covington.

In sum, Covington had written notice of all hearings, participated in all hearings, subpoenaed witnesses and examined these, and presented evidence. We agree with the State that Covington received as much process as he was due.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when it revoked Covington's community corrections placement in work release and imposed the balance of his suspended sentences.

Affirmed.

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