

Case Summary

Richard Bartlett violated his community corrections placement and probation by testing positive for amphetamine. He now appeals his sanction for violating his probation. Finding no abuse of discretion, we affirm.

Facts and Procedural History

In June 2010, Bartlett pled guilty to Class D felony arson. In July 2010, he was sentenced to two and a half years in the Indiana Department of Correction with one year executed and one and a half years suspended. Appellant's App. p. 21. The one-year executed portion of his sentence was ordered to be served in the Hamilton County Community Corrections work release program. *Id.* One year of his suspended sentence was ordered to be served on probation. *Id.*

Less than one month after entering the work release program, Bartlett was given a urine drug screen, which tested positive for amphetamine. He had taken the drug Adderall without a prescription. On August 26, 2010, the State filed a Notice of Non-Compliance with Community Corrections Placement alleging that Bartlett tested positive for amphetamine on August 13, 2010, in violation of community corrections rules. *Id.* at 24. On August 30, the State filed a notice of probation violation alleging that Bartlett violated his probation by violating the conditions of his community corrections placement by testing positive for amphetamine. *Id.* at 26.

A hearing for both the community corrections and probation violations was held in October 2010. At this time, Bartlett had been in jail for approximately forty days. Although Bartlett was prepared to admit to violating both community corrections and

probation, he and the State could not agree on sanctions. *See* Tr. p. 4. The trial court instructed Barlett that his disposition would be “completely at the Court’s discretion.” *Id.* The hearing proceeded, and Bartlett admitted to violating both community corrections and probation. As for sanctions, Bartlett explained that he received the pill from a co-worker while he was working at Jiffy Lube on work release. He said that he was experiencing symptoms of ADD and that he used to be under the care of a doctor for ADD. Bartlett promised that he was not “gonna pull another stupid stunt” like this and that he was “gonna fly straight.” *Id.* at 24.

The State recommended that Bartlett serve the remainder of his work release in the DOC, which amounted to approximately 191 days. Bartlett, however, asked to be placed back on work release with no time in the DOC. The trial court ruled:

On July 21st of this year I listed for you a couple of things that I thought made the sentencing hearing or it made different factors considered -- that I should consider those factors to be aggravating factors. That would be your criminal history, recent criminal history, crimes that occurred while you were -- or allegations of crimes that occurred while you were on bond. And I also listed your marijuana use as an aggravating factor. Since it wasn't that long ago, you might recall me talking about those things. Two things I listed as mitigators were that you were young and that you pled guilty. There are a number of other things that I wrote down as things that I thought helped me determine what type of person I was dealing with, or in other words, what your character was. And the things that I wrote down at the time, I'm not too sure if I commented on them or not, but from a review of your presentence investigation and the evidence at the hearing that there was information that you had quit a number of jobs that you had previously held, that you quit school, you were suspended from school, that you did not take -- did not take full advantage of opportunities for rehabilitation that had been given to you in the past. I also commented upon how, based upon the timing of your child's birth that you knew or should've known that your fiancé[e] was pregnant at the time of the commission of your crime that you pled guilty to. And one thing I will comment on today that I think is -- that I really do think is significant and I've mentioned it enough that I think everybody here would know that I think this is significant. And that is at

your sentencing hearing, in support of you, Mr. Bartlett, was your mom, your fiancé[e], your best friend, your step-father, and your fiancé[e] believed it was a good idea to bring your child to the courtroom. Today, not even three months later, there isn't a soul in the courtroom here in support for you.

Id. at 32-34. At this point, Bartlett tried to interrupt. But the court continued:

I don't wanna hear any explanation for that, Mr. Bartlett. This was a scheduled hearing. If they wanted to be here, they could've been here. There's nothing that I'm gonna say at [t]his point in time that's gonna give you the floor back, Mr. Bartlett. And on top of all those things that I considered to be aggravating factors before and things that amounted to what type of character you had, and the type of support that you had, now you are here again with having violated Community Corrections. Now with what I had discussed with you at your sentencing hearing, your opportunity to show me that you have learned your lesson. To fly straight. Three months ago I told you you had that opportunity to do that. To prove to me that you were separating yourself from the person who you were prior to your child's birth. But, yet, what you have done instead is prove to me that you're the same person. And I gave you a fair -- I think I gave you a pretty significant break back on July 21st. With the aggravating factors that I listed, I could have and had good reason to show you what the inside of prison was like, and instead gave you the opportunity you asked for. And that was to work, to continue to be a productive citizen, and try to support your child. And you have once again scoffed at that opportunity to take advantage of your rehabilitation and I can no longer allow that to occur.

Id. at 34-35. For violating community corrections, the trial court ordered Bartlett to serve the remaining 191 days in the DOC. Appellant's App. p. 39. For violating probation, the court ordered Bartlett to serve 180 days on work release. Tr. p. 36; Appellant's App. p. 39. "Upon completion of Work Release, [Bartlett] shall then complete probation as previously ordered." Appellant's App. p. 39. Bartlett now appeals.

Discussion and Decision

We first point out what Bartlett does not argue on appeal. He does not challenge the trial court's order that he serve the remaining 191 days of his work release in the DOC for violating his community corrections placement. Instead, he argues that he "should be released to probation on the completion of" this sentence. Appellant's Br. p. 5. In other words, Bartlett challenges that part of the court's order requiring him to serve 180 days in work release following his time spent in the DOC for violating probation. *See id.* at 13.

"Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id.* Upon revocation of probation, the trial court may impose one or more of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g). Courts have discretion regarding which sanction to impose after finding a violation of probation. *Prewitt*, 878 N.E.2d at 188.

Here, for violating his probation, the trial court modified his previously-suspended sentence of one and a half years by ordering him to serve 180 days on work release and then continued Bartlett on probation for one year. *See* Tr. p. 36 (trial court explaining

probation violation sanction as follows: “Modifying the previously suspended sentence, executing a hundred and eighty days on work release. . . . Then to return [f]or the one year remaining for [p]robation.”). Bartlett argues that the trial court abused its discretion in ordering him to serve 180 days on work release following his release from the DOC instead of just releasing him to probation. Bartlett asserts the court disregarded the State’s recommendation, wrongly considered his family’s absence from the hearing, failed to take into account that the drug could have been used to treat a legitimate medical condition, and failed to give consideration to the fact that he spent forty days in jail before the hearing.

We find that the trial court did not abuse its discretion in crafting Bartlett’s sentence. Bartlett violated the terms of his community corrections placement and probation less than one month after he was sentenced. Bartlett took Adderall, an amphetamine, without a prescription. He received the drug from a co-worker at Jiffy Lube. Although Bartlett told the trial court that he had been diagnosed with ADD in the past, he provided no medical records to support this. In addition, Bartlett admitted that he never even had a prescription for Adderall. *Id.* at 11. The trial court was free to weigh Bartlett’s testimony.

Although the State recommended to the trial court that Bartlett be released to probation after he served the remainder of his work release in the DOC, the court was not bound by the State’s recommendation. In fact, Bartlett had the opportunity to accept the State’s recommendation, but he chose to take his chances with the trial court. Contrary to

Bartlett's argument, the court did take into consideration that Bartlett spent forty days in jail. This time was subtracted when arriving at his 191-day DOC sentence.

As a final matter, we do find that the court improperly considered Bartlett's family's absence at the hearing. As Bartlett points out on appeal, the CCS reveals that this hearing was rescheduled several times. Nevertheless, this fact does not alter the major facts facing the trial court. That is, the court gave Bartlett a break at his July sentencing hearing when it placed him on work release instead of in the DOC. However, Bartlett violated the rules placed upon him less than one month later by testing positive for amphetamine. Instead of sentencing Bartlett to 180 days on work release, the trial court could have sentenced him to one year or even more in the DOC. The court crafted a sentence that allowed for an intermediate phase between incarceration and probation for Bartlett to use as a tool toward his rehabilitation. *See id.* at 35 ("So I'm stepping you down. Work release apparently wasn't enough, so you're gonna go to prison, then you'll step back down into work release, giving you an opportunity to either prove to me that you can fly straight, like you said now a second time, or once again prove to me that you have no intention of changing who you are.").

To the extent that Bartlett argues that his sentence is inappropriate, that claim is not available in post-sentence probation violation proceedings. *See Jones v. State*, 885 N.E.2d 1286, 1290 (Ind. 2008); *see also Monroe v. State*, 899 N.E.2d 688, 691 (Ind. Ct. App. 2009) (petitions to revoke probation and petitions to revoke placement in community corrections program are treated same). The trial court did not err in sentencing Bartlett.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.