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.

FILED
Jun 17 2011, 9:18 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

LAURA M. TAYLOR
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TRAVIS BRITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1011-CR-1258
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0907-FB-60899

June 17, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Travis Britt appeals the revocation of his community corrections placement and the order that he be returned to the Department of Correction.[1] The State provided sufficient evidence Britt violated the terms of the placement, and the trial court was within its discretion to return him to prison. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 26, 2010, Britt left the work release facility where he was completing his community corrections program. He had a medical pass that required him to return by 1:30 p.m. that day. By 6:30, he had not returned and a warrant was issued for his arrest. Police arrested Britt on November 2. After a hearing, the trial court ordered the execution of Britt's suspended three-year sentence.

DISCUSSION AND DECISION

We note the State has not submitted an appellee's brief. When an appellee does not submit a brief, we do not undertake the burden of developing an argument for the appellee, *Benefield v. State*, 945 N.E.2d 791, 796 (Ind. Ct. App. 2011), and the appellant may prevail

---

[1] Britt states the issue as whether the State proved "Britt's behavior constituted a violation of his *probation*" (Br. of the Appellant at 1) (emphasis added), but that was not the violation the trial court ruled on. The court explicitly stated after Britt's hearing "The Court's going to find that he's violated the terms and conditions of his *Community Corrections*." (Tr. at 13) (emphasis added).

Britt is correct that the State did not prove a *probation* violation. Britt's Order of Commitment to Community Corrections provides he is to "comply with all rules [and] regulations" of the facility. (App. at 31.) That document refers to an "Order of Probation issued on this date," (*id.*), but no such order is included in Britt's appendix. Nor did the State choose to provide us with that document. See *Johnson v. State*, 756 N.E.2d 965, 967 (Ind. 2001) (noting our rules "provide opportunities for the appellee to file an Appendix containing materials not found in the appellant's Appendix, and for the filing of supplemental appendices. *See* App. R. 50(A)(3), 50(B)(2), 50(D)." The State offered no evidence at the revocation hearing as to the conditions of Britt's probation, and we can find nothing in the record that indicates compliance with the Commitment Order or the rules of the facility was also a condition of Britt's probation.

by establishing *prima facie* error. *Id*. *Prima facie* error is error "at first sight, on first appearance, or on the face of it." *Id*. (quoting *State v. Augustine*, 851 N.E.2d 1022, 1025 (Ind. Ct. App. 2006)).

A court may revoke a community corrections placement if a person "violates the terms of the placement." Ind. Code § 35-38-2.6-5. The court may, after a hearing, change the terms of the placement, continue the placement, or "[r]evoke the placement and commit the person to the department of correction for the remainder of the person's sentence." *Id*. A hearing to terminate a person's work release is civil in nature, so to revoke Britt's placement, the State needed to prove by only a preponderance of the evidence the revocation was warranted. *See Patterson v. State*, 750 N.E.2d 879, 883 (Ind. Ct. App. 2001). We will affirm the revocation of placement in a community corrections program if, considering only the probative evidence and reasonable inferences therefrom, there is sufficient evidence the individual within the program is guilty of violating any condition of the program. *Id*.

Britt's Order of Commitment provides he is to "comply with all rules [and] regulations" of the facility. (App. at 31.) The trial court heard testimony Britt left the facility on an "approved pass, he was given a time, agreed upon time to return to our Center, at his return time, he had not returned." (Tr. at 5.) If a resident does not contact the facility within a "two-hour time window," he "will be placed on escape." (*Id*.) Britt did not contact the facility, a warrant was issued for his arrest, and he was arrested a few days later. The trial court could reasonably infer from that testimony that Britt violated a rule of the facility. He

has not established *prima facie* error.

Britt next argues it was error to "impose execution of the suspended sentence upon a finding of a violation of probation." (Br. of the Appellant at 4.) It was not. Ind. Code § 35-38-2.6-5 explicitly permits a court to "[r]evoke the placement and commit the person to the department of correction for the remainder of the person's sentence." Britt asserts the "circumstances and nature of [his] alleged violation was [sic] not heinous," (Br. of the Appellant at 6), but the statute does not so limit the trial court's discretion, and we decline to read such a requirement into the statute.

We accordingly affirm the trial court.

Affirmed.

BAKER, J., and BRADFORD, J., concur.