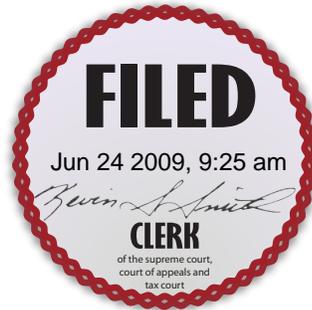


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY S. REEDER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 18A02-0810-CR-870
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey
Cause No. 18C02-0704-FD-29

June 24, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Delaware Circuit Court found Jeremy S. Reeder (“Reeder”) to be in violation of the terms of his home detention and ordered him to serve the remainder of his previously-suspended sentence. Reeder appeals and presents one issue, which we restate as the following three:

- I. Whether the petition to revoke Reeder’s placement in home detention was filed by the proper party;
- II. Whether the trial court properly ordered Reeder’s previously-suspended sentence executed, including that portion that had been suspended to probation; and
- III. Whether the evidence was sufficient to support the trial court’s decision.

We affirm.

Facts and Procedural History

On April 19, 2007, the State charged Reeder with Class D felony resisting law enforcement, Class A misdemeanor operating a vehicle while intoxicated (“OWI”), Class A misdemeanor criminal recklessness, and Class A misdemeanor driving while suspended. The State also alleged that Reeder’s OWI should be elevated to a Class D felony due to Reeder’s prior conviction for OWI.

On March 31, 2008, Reeder entered into a plea agreement with the State whereby Reeder pleaded guilty to OWI and resisting law enforcement and the State agreed to dismiss the remaining charges and not file a habitual offender enhancement. With regard to sentencing, the plea agreement provided:

6. The parties agree that [Reeder] shall receive the following sentence:
One and one-half (1 1/2) years to the Indiana Department of Correction on each count, said sentences to be served consecutively for a total of three (3) years, all suspended on the following conditions:

- A. Two (2) years of supervised probation with this Court's probation officer
- B. [Reeder] shall serve one (1) year of electronic home detention, however, [Reeder] must maintain his employment or the remainder of executed time must be served in jail

Appellant's App. p. 48. The trial court accepted the plea agreement and sentenced Reeder accordingly. Reeder then began to serve his sentence on home detention.

On June 26, 2008, the home detention supervisor for Delaware County Community Corrections, and the deputy prosecutor filed a petition ("the Petition") alleging that Reeder had committed seven acts which violated the terms of his home detention. A hearing on the Petition was held on August 28, 2008. At the hearing, Reeder, who was represented by counsel, admitted that he knowingly violated the terms of his home detention:

THE COURT: So sir are you saying that although that you may have left [home] with permission, you certainly did not return within the three hours that were assigned?

DEFENDANT: Yes there are times that I was late coming home from my assigned time.

PROSECUTOR: Okay, you knew that to be a violation then?

DEFENDANT: Yes sir.

Tr. pp. 3-4. The trial court then found that Reeder had violated the terms and conditions of his placement and heard arguments with regard to disposition. The community corrections officer recommended that the one year Reeder had been placed in home detention now be served either in the local jail or in the Department of Corrections. The prosecutor argued that the remainder of Reeder's sentence should be executed. The trial

court ultimately agreed with the prosecutor and ordered that the balance of Reeder's sentence be executed. Reeder now appeals.

Standard of Review

Reeder's argument is difficult to follow. He couches his entire appellate argument in terms of the inappropriateness of his sentence under Indiana Appellate Rule 7(B). However, our supreme court has repeatedly held that "the appellate evaluation of whether a trial court's sanctions are 'inappropriate in light of the nature of the offense and the character of the offender' is not the correct standard to apply when reviewing a trial court's actions in a post-sentence probation violation proceeding." Jones v. State, 885 N.E.2d 1286, 1290 (Ind. 2008) (citing Prewitt v. State, 878 N.E.2d 184, 187-88 (Ind. 2007)). This is so because "[a] trial court's action in a post-sentence probation violation proceeding is not a criminal sentence as contemplated by the rule." Id. Thus, "[t]he review and revise remedy of App[ellate] R[ule] 7(B) is not available." Id.

This reasoning also applies to revocation of home detention or community corrections placement. The trial court's action here was not a criminal sentencing as contemplated by Appellate Rule 7(B); it was instead a post-sentencing revocation hearing. We agree with Jones and Prewitt that Appellate Rule 7(B) does not apply in the present case. See Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999) (holding that similarities between probation and placement in community corrections justify treating a petition to revoke placement in community corrections in the same manner as petition to revoke probation).

Instead, like a probation violation, sanctions imposed by the trial court for violation of the terms of home detention or community corrections are subject to appellate review for abuse of discretion. See Jones, 885 N.E.2d at 1290. A revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox, 706 N.E.2d at 551. We consider only the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court’s conclusion, we will affirm its decision. Id.

I. Proper Party

Reeder first argues that it was improper for the trial court to grant the Petition because it was “improperly brought by the wrong party[.]” Appellant’s Br. at 10. As noted by the State, however, Reeder did not challenge the Petition below by arguing that it had been brought by the wrong party. As a general rule, a party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court. Turner v. State, 870 N.E.2d 1083, 1085 (Ind. Ct. App. 2007). The failure to object at trial results in waiver of the issue on appeal. Id. Reeder’s argument is therefore waived. See id.

Even if we were to consider Reeder’s argument upon its merits, he would not prevail. As best we can determine, Reeder argues that he was “incarcerated” with the Department of Correction during his home detention, and therefore Delaware County Community Corrections was not the proper party to file the Petition. Reeder is mistaken.

As explained by this court in Kopkey v. State, 743 N.E.2d 331, 340 (Ind. Ct. App. 2001), trans. denied, home detention may be imposed as a condition of probation, see Ind. Code § 35-38-2.5-5 (2004), or as a direct placement into a community corrections program, see Ind. Code § 35-38-2.6-3 (2004 & Supp. 2006). A trial court, when imposing home detention as a condition of probation, “may order supervision of an offender’s home detention to be provided by the probation department for the court or by a community corrections program that provides supervision of home detention.” I.C. § 35-38-2.5-5(c). Thus, whether home detention is imposed as a condition of probation or as a direct placement into a community corrections program, the community corrections program may properly be the supervising authority.

Here, Reeder admits that there was evidence that Delaware County Community Corrections was supervising his home detention. He nevertheless claims that community corrections improperly asserted authority over him when it filed the Petition. Reeder cites Kopkey for the proposition that his placement in home detention means that he was “‘incarcerated’ in the Indiana Department of Correction for a total of one year, serving this ‘incarceration’ in home detention.” Appellant’s Br. p. 13. First, Reeder refers us to no portion of his plea agreement or sentencing order which indicated that his home detention was to be treated as “incarceration.” In fact, both Reeder’s plea agreement and the sentencing order specifically state that Reeder’s sentences were “suspended.” Appellant’s App. p. 50. Moreover, Kopkey stands for precisely the opposite proposition that Reeder cites it for. Although the plea agreement and sentencing order in Kopkey described the home detention as a period of incarceration, the court specifically noted,

“[t]his conflicts with prior statements of this court that *home detention is not equivalent to incarceration.*” 743 N.E.2d at 340 (emphasis added) (citing Antcliff v. State, 688 N.E.2d 166, 169 (Ind. Ct. App. 1997)).

Thus, under the terms of his plea agreement, the sentencing order, and case law, Reeder was not “incarcerated” when he was on home detention. Instead, he was under the supervision of Delaware County Community Corrections, which could properly seek to have Reeder’s placement in home detention revoked. See Ind. Code § 35-38-2.6-5 (2004) (if defendant violates terms of placement in community corrections, trial court may “[r]evoke the placement and commit the person to the department of correction for the remainder of the person’s sentence.”).¹

II. Revocation

In a somewhat related argument, Reeder claims that he violated only the terms of his one-year placement in home detention, and never started officially serving his probation, and the trial court therefore should have terminated only the one-year portion of his sentence which had been ordered to be served in home detention. Essentially, Reeder argues that, because he was not yet on probation and was not alleged to have committed any violation of the terms of his probation, then the trial court could not revoke his probation before he had a chance to serve his probation. We cannot agree.

In Gardner v. State, 678 N.E.2d 398 (Ind. Ct. App. 1997), the court noted that “[p]robation is merely the condition resulting from a suspended sentence.” Id. (quoting

¹ Reeder’s argument also ignores the fact that, in addition to being signed by a community corrections officer, the Petition was also signed by the deputy prosecutor. Reeder makes no argument that the State, represented by the prosecuting attorney, was not the proper party to file the Petition.

State ex rel. Wilson v. Lowdermilk, 245 Ind. 93, 99, 195 N.E.2d 476, 479 (1964)). The court also noted that the relevant statute provided that, if a trial court placed a person in community corrections, “the court shall suspend the sentence[.]” Id. (quoting Ind. Code § 35-38-2.6-4). In this sense, a defendant is “on probation from the day of sentencing onward.” Id. Also, a defendant can violate the terms of his probation prospectively. Id. (citing Ashba v. State, 570 N.E.2d 937, 939 (Ind. Ct. App. 1991), *aff’d by* 580 N.E.2d 244 (Ind. 1991)).

More importantly, Reeder admittedly violated the conditions of his home detention. Pursuant to statute, if a person violates the terms of their placement in community corrections, the trial court may “[r]evoke the placement and commit the person to the department of correction *for the remainder of the person’s sentence.*” I.C. § 35-38-2.6-5 (emphasis added). Given such statutory authority, we cannot say that the trial court erred in revoking the entire portion of Reeder’s previously-suspended sentence.

III. Sufficiency

Lastly, Reeder claims that that he “did not know which rules to follow due to the conflicting communication by the departments of [the] Indiana Department of Correction.” Appellant’s Br. at 15. As best as we can discern, Reeder claims that there was insufficient evidence to establish that he knowingly violated the terms of his placement in home detention because there was no evidence submitted regarding precisely which rules he violated. However, this argument ignores the fact that Reeder admitted that he knowingly violated the terms of his home detention. Tr. pp. 3-4. Under these facts and circumstances, we cannot agree with Reeder that there was insufficient

evidence to establish that he knew the terms of his home detention and violated these terms.

Affirmed.

RILEY, J., and KIRSCH, J., concur.