



## **Case Summary**

Destin Quinn Bray appeals the trial court's revocation of his participation in a community corrections program, asserting that the trial court abused its discretion and erred in calculating credit time due him. We affirm.

## **Facts and Procedural History**

On January 29, 2007, in cause number 48C01-0702-FD-93 ("FD-93"), the State charged Bray with class D felony receiving stolen property. On March 5, 2007, Bray pled guilty without a plea agreement. On March 26, 2007, the trial court sentenced Bray to three years, suspended on formal probation. The court ordered Bray's sentence to be served consecutive to that in cause number 48C01-0608-FC-317 ("FC-317"), which is not part of the appeal.

On May 16, 2007, in cause number 48C01-0705-FC-244 ("FC-244"), the State charged Bray with class C felony forgery and class D felony theft. The State later amended the information to add a charge of class D felony receiving stolen property. On August 27, 2007, Bray pled guilty pursuant to a plea agreement to class C felony forgery and class D felony receiving stolen property, and the State dismissed the theft charge. On September 17, 2007, the court sentenced Bray to concurrent three-year terms, executed.<sup>1</sup> The court ordered the sentence to be served consecutive to FC-317, and the court reserved the right to modify

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<sup>1</sup> The trial court subsequently amended Bray's sentence for receiving stolen property to eighteen months, to be served concurrent with his three-year forgery sentence, to conform with the plea agreement.

the sentence to community corrections upon completion of the executed time ordered in FC-317.

On May 29, 2008, Bray was released from incarceration to the Community Justice Center (“CJC”) – Continuum of Sanctions Program for the balance of his sentence in FC-244. On August 28, 2008, the CJC filed a termination of continuum of sanctions in FC-244, alleging that Bray had violated its rules by leaving his residence without authorization at 11:59 p.m. on August 26, 2008, until 12:07 p.m. on August 27, 2008, and at 2:43 a.m. on August 28, 2008, and had not returned. On September 2 and October 7, 2008, the CJC filed an amended termination of continuum of sanctions in FC-244 and FD-93, respectively, adding an allegation that on August 28, 2008, Bray was arrested and charged with strangulation and domestic battery.<sup>2</sup> In FC-244, following a hearing, the court found that Bray had violated the terms and conditions of the CJC’s community corrections program. In FD-93, in a separate hearing, Bray admitted the violations. On December 17, 2008, the State filed a calculation of time remaining on Bray’s sentences in various causes. On December 19, 2008, the trial court ordered Bray to serve his three-year terms in FD-93 and FC-244, consecutively, and consecutive to Bray’s sentences in cause numbers 48C01-0808-FD-508 and 48C01-0809-FD558, which are not part of this appeal.

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<sup>2</sup> The chronological case summary for FD-93 shows that the amended termination of continuum of sanctions was filed October 7, 2007, but this is clearly a scrivener’s error and should read 2008.

## Discussion and Decision

Bray appeals the revocation of his participation in the CJC's community corrections program.

For 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. The similarities between the two dictate this approach. Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction and both are made at the sole discretion of the trial court. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right.

*Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999) (citations, footnotes, and quotation marks omitted). “An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before the court.” *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006).

If a person violates the terms of placement in a community corrections program, the court may, after a hearing, take any of the following action:

- (1) Change the terms of the placement.
- (2) Continue the placement.
- (3) Revoke the placement and commit the person to the department of correction for the remainder of the person’s sentence.

Ind. Code § 35-38-2.6-5. “It is well settled that violation of a single condition of probation is sufficient to revoke probation.” *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

Here, Bray does not argue that there was insufficient evidence that he violated the conditions of his community corrections placement. Rather, he contends that revocation was unwarranted and overly punitive. We disagree. He not only left his home without

authorization, but he also went to his wife's residence, threatened her, punched her in the face, pushed her on the floor, and held her there with his hand on her neck, cutting off her air supply—all in the presence of his minor children.<sup>3</sup> Tr. at 103. Therefore, we conclude that the trial court did not abuse its discretion in revoking Bray's placement in the CJC's community corrections program.

Bray also asserts that the trial court erred in calculating credit time due him in FD-93. We observe that it is "Appellant's duty to present an adequate record clearly showing the alleged error. Where he fails to do so, the issue is deemed waived." *Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002). To support his argument, Bray merely refers to the prosecutor's statement at a December 15, 2008, hearing that Bray served ninety-one days before he was placed on home detention. Tr. at 143. However, in response, the trial court stated:

I'm not gonna worry with him right now. I've got ... this huge stack of stuff and nobody's taken the time to figure this out. I'm not gonna take the time now and we'll do it another day.

*Id.* Thereafter, on December 17, 2008, the State submitted a detailed accounting of the credit time due in each cause, showing no credit time served for FD-93. Appellant's App. at 52-53. At the final hearing on December 19, 2008, the court and the parties thoroughly discussed the amount of credit due in each cause and concluded that Bray was not entitled to any credit

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<sup>3</sup> Bray asserts that a "one strike and out philosophy is overly punitive and does nothing to give the offenders the assistance and motivation they need to reintegrate into society." Appellant's Br. at 7. Here, the violation was not minor nor was it Bray's only failure to conform to the law.

time in FD-93. Tr. at 148-55. Thus, Bray has failed to provide a record showing the alleged error and has waived his claim. Accordingly, we affirm the trial court.

Affirmed.

MAY, J., and BROWN, J., concur.