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No. 3--09--0532

Order filed April 11, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the Tenth Judicial Circuit
)	Peoria County, Illinois
Plaintiff-Appellee,)	
)	
v.)	No. 04--DT--823
)	
HAROLD GROEL,)	Honorable
)	Rebecca R. Steenrod
Defendant-Appellant.)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Schmidt dissented.

ORDER

Held: Trial court lacked jurisdiction to rule on State's petition to revoke probation that was filed 15 months after the court entered orders indicating that defendant's court supervision was for 12 months.

Defendant, Harold Groel, was sentenced to 18 months court supervision after pleading guilty to driving under the influence (DUI). Defendant admitted to violating his court supervision, so

it was extended. The orders from that date state that defendant was resentenced to 12 months court supervision but also state that the supervision ends 18 months from the date of the order. Fifteen months later, the State filed a petition to revoke defendant's court supervision. Following a hearing, the trial court revoked defendant's court supervision because defendant did not fulfill its terms, entered a conviction on defendant's DUI, and closed the case. Defendant appeals, arguing that the trial court lacked jurisdiction to consider the State's petition to revoke. We agree and reverse.

In February 2005, defendant was charged with DUI (625 ILCS 5/11--501(a)(2) (West 2004)). In July 2005, defendant entered a guilty plea and was placed on court supervision for 18 months. He was also ordered to pay fines and costs and ordered to undergo a treatment evaluation within 17 months. On January 4, 2007, the State filed a petition to revoke defendant's court supervision.

On May 23, 2007, defendant admitted to violating his court supervision. His court supervision was then extended. The "Final Order" entered on that date states that defendant was placed on court supervision; however, in the body of the order the number of months to be served is indecipherable. The bottom of the order states that defendant was "resentenced to 12 mo c/s."

On the same date, the court entered a "Court Supervision Order." One provision of the order states that defendant's court supervision will terminate on "11-22-08." Another paragraph of the order states: "Court Supervision ordered for 12 months *** and such supervision shall terminate on 11-22-08", or 18 months later. At the bottom of the order, a handwritten notation states that defendant was "resentenced to 12 mo. c/s." The minute order for that date also states that defendant is "resentenced to 12 mo c/s." The report of proceedings from that date indicates that defendant's supervision is extended but does not mention any length.

On August 27, 2008, the State filed a petition to revoke defendant's court supervision. The petition states: "The defendant was found guilty of DUI and was placed on Court Supervision by the Court on 7-18-05, for a period of 18 months, which was extended to 11-22-09."

A hearing on the petition to revoke defendant's court supervision was held on July 2, 2009. At the conclusion of the hearing, the trial court found that defendant violated his court supervision. As a result, the trial court terminated defendant's court supervision as being unsuccessful, entered a conviction for DUI and closed the case.

ANALYSIS

Defendant argues that the trial court lacked jurisdiction to revoke his court supervision because it had already ended when the State filed its petition to revoke.

Subject matter jurisdiction over a defendant on court supervision lasts only for the duration of the court supervision. See *People v. Carter*, 165 Ill. App. 3d 169, 172 (1988); *People v. Speight*, 72 Ill. App. 3d 203, 209 (1979). The only exception is if a petition to revoke is filed and served on the defendant during the term of the court supervision. See 730 ILCS 5/5--6--4(a) (West 2006). In that case, the court supervision is tolled and the trial court retains subject matter jurisdiction over the defendant until a hearing on the petition is held. See 730 ILCS 5/5--6--4(a) (West 2006). Absent such a tolling, the court has no authority to revoke a defendant's court supervision after the court supervision has expired. See *People v. Martinez*, 150 Ill. App. 3d 516, 517-18 (1986).

A defendant whose court supervision the State seeks to revoke must be accorded substantial justice. *People v. Saucier*, 221 Ill. App. 3d 287, 291 (1991). While the defendant at a revocation hearing is not entitled to the same protections afforded a defendant initially standing trial for the substantive criminal offense, he is nevertheless entitled to "minimal due process." *Id.* Due process requires that a person know the terms

of his court supervision. *Id.* at 292. Due process is achieved if the average person would understand the meaning of the terms contained in an order for court supervision. *Id.* at 292.

Since a sentence of court supervision constitutes a form of agreement between the defendant and the State, it is important that there be a definite, memorialized understanding of the terms of the agreement. *Id.* at 291-92. A court order must be interpreted in its entirety, taking into consideration other parts of the record, including the pleadings, the motions before the court, and the issues to be decided. *People v. Ryan*, 259 Ill. App. 3d 611, 613 (1994). An order should be construed reasonably so as to give effect to the discernable intent of the court. *Id.*

Here, the trial court's orders entered on May 23, 2007, contain conflicting time frames for defendant's court supervision. The "Final Order" provides that defendant's supervision is for an undecipherable number of months but then explicitly states that defendant is resentenced to 12 months court supervision. The "Court Supervision Order" states in two different places that defendant's court supervision is for 12 months but then provides (in two different places) a termination date for the supervision that is 18 months from the date the order was entered. Finally, the minute order indicates that defendant is resentenced to 12 months court supervision.

Although the court supervision order has two different end dates for defendant's court supervision, we find that the court intended that defendant be sentenced to 12 months court supervision based on (1) the provision in the supervision order that court supervision is "ordered for 12 months," and (2) the repeated and consistent notation contained in the Final Order, Court Supervision Order and minute order that defendant is resentenced to 12 months court supervision.

The State did not file its petition to revoke defendant's court supervision until August 27, 2008, over three months after defendant's 12-month court supervision ended. As a result, the court had no subject matter jurisdiction over defendant and could not revoke his court supervision. See *Carter*, 165 Ill. App. 3d at 172; *Speight*, 72 Ill. App. 3d at 203; *Martinez*, 150 Ill. App. 3d at 517-18. Thus, we reverse the trial court's order terminating defendant's supervision unsuccessfully and entering a conviction for DUI.

The order of the Peoria County circuit court is reversed.

Reversed.

No. 3--09--0532, *People v. Harold Groel*

JUSTICE SCHMIDT, dissenting:

I find from looking at the entire record that it is clear the trial court intended the defendant's court supervision to

terminate on November 22, 2008. The court supervision order entered by Judge Collier on May 23, 2007, clearly places defendant on court supervision "to 11-22-08." More importantly, it is clear that the number 5 was written first and the number 11 was written over the top of the number 5. This same thing appears lower in the order under the "MINIMUM CONDITIONS WHICH YOU MUST MEET ARE AS FOLLOWS: 7. Court Supervision ordered for 12 months pursuant to Chapter 38, Illinois Revised Statutes Paragraph 1005-6-1, and such supervision shall terminate on 11-22-08." Again, the 11 is written on top of the 5. No doubt that we have two times on that page where there is reference to "12" months of court supervision, but it also seems that the judge's clear intent was to have the court supervision end 18 months later on the specific date of November 22, 2008.

In the final order also signed by Judge Collier on May 27, 2007, I do not find the entry at the middle of the page indecipherable, but rather, the number 18 written over the top of the number 12. However, again at the bottom of the page, there is reference to 12 months' court supervision as opposed to 18 months. That being said, looking at the record as a whole the specific date of termination better reflects the judge's clear intention. *People v. Ryan*, 259 Ill. App. 3d 611 (1994).

I believe that the order of court supervision extended the

court supervision to "11-22-08," notwithstanding the references to 12 months. It seems clear that the trial judge corrected his earlier entries of "5-22-08," not once, but twice. I would find that the trial court had jurisdiction to enter the order and would affirm. I therefore respectfully dissent from the majority's order.