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No. 3--09--0509

Order filed January 19, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07--DT--150
	)	
DAVID C. GILLHAM,	)	Honorable
	)	Rebecca R. Steenrod,
Defendant-Appellant.	)	Judge, Presiding.

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Justice O'Brien delivered the judgment of the court.  
Presiding Justice Carter concurred in the judgment.  
Justice McDade dissented.

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**ORDER**

*Held:* The trial court did not err in revoking the defendant's court supervision and entering an order of conviction for DUI. The evidence demonstrated that the defendant failed to obtain substance abuse treatment and meet other conditions of his court supervision because he was in denial that he had substance abuse problems and willfully did not pursue treatment or complete other conditions.

The defendant, David C. Gillham, pled guilty to driving under the influence (DUI) (625 ILCS 5/11--501(a)(2) (West 2006)).

The defendant was sentenced to 12 months of court supervision that included a requirement that he obtain alcohol treatment. Ten months later, the State filed a petition to revoke the defendant's supervision, alleging that the defendant failed to complete conditions of the supervision. The court revoked the defendant's supervision, entered an order of conviction for DUI, and sentenced the defendant to one year of conditional discharge. On appeal, the defendant argues that the State failed to prove that he willfully failed to obtain alcohol treatment. We affirm.

#### FACTS

On April 11, 2007, the defendant pled guilty to DUI and was sentenced to 12 months of court supervision. The defendant's supervision was conditioned upon the defendant paying fines, costs, and fees; attending Dri-Roads education classes; obtaining an alcohol evaluation by May 11, 2007; undergoing alcohol treatment by February 11, 2008; attending a one-hour victim impact panel by February 11, 2008; and refraining from violating any criminal or traffic laws. On February 13, 2008, the State filed a petition to revoke the defendant's supervision. The State alleged that he was in violation of his supervision because he had been convicted of an "indecent act," failed to attend treatment, failed to attend Dri-Roads education classes, failed to pay the balance of his fines, costs, and fees, failed to attend a victim impact panel, and failed to obtain an

evaluation.<sup>1</sup>

On August 21, 2008, a hearing on the petition to revoke took place. The defendant testified that he obtained an alcohol evaluation but was scheduled to obtain a second evaluation on September 8, 2008. He sought a second evaluation because he did not agree with the results of the first evaluation that indicated that he was a high risk drinker. The defendant admitted that he did not obtain any treatment as required under the condition of his supervision.

The defendant testified that he had paid approximately \$900 toward his fines. He claimed that he did not obtain treatment because he thought he was required to pay fines first and was unable to pay for fines and treatment simultaneously. The defendant's income was \$622 per month from Social Security. The defendant also testified that he did not know that he had a deadline by which he was required to attend treatment.

The defendant was scheduled to start classes on September 5, 2008, and based on his evaluation he was required to attend 75 hours of classes. If a second evaluation resulted in a different assessment, then it was possible he would only be required to attend 20 to 40 hours of classes, which would be less expensive. The defendant testified that he was willing to complete 75 hours of classes if required to do so. The defendant's attorney argued

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<sup>1</sup> The indecency act allegations were later dropped.

that the defendant's supervision could not be revoked because the defendant's failure to meet the conditions of supervision was not willful but a result of defendant's inability to pay.

After hearing the defendant's testimony and reviewing the defendant's evaluation, the trial court found:

"[The defendant] is a substance abuser and is in denial about it. Shaking his head at me as we speak. He abuses substances, he combines prescription drugs with the alcohol, and he is a danger to the public."

The court revoked the defendant's court supervision, entered a conviction of DUI, and sentenced him to one year of conditional discharge. The defendant filed a motion to reconsider. The court denied the motion, finding that, although the defendant had testified to his financial circumstances, he had not obtained the requisite evaluation until after the petition to revoke was filed. The trial court found that it was "quite clear" that the defendant felt that he did not need treatment and, consequently, did not pursue treatment. The defendant appealed.

#### ANALYSIS

On appeal, the defendant argues that the revocation of his supervision was improper because the State failed to prove that his failure to obtain alcohol treatment was willful in light of his testimony that he could not afford treatment while also paying court-ordered fines. We review the trial court's

revocation of the defendant's supervision for an abuse of discretion. *People v. Jones*, 377 Ill. App. 3d 506 (2007).

Pursuant to the Unified Code of Corrections, "in order to protect the public, the criminal justice system must compel compliance with the conditions of probation by responding to violations with swift, certain and fair punishments and intermediate sanctions." 730 ILCS 5/5--6--1 (West 2008). The State has the burden of proving a violation of supervision by the preponderance of the evidence. 730 ILCS 5/5--6--4(c) (West 2008).

Supervision shall not be revoked for failure to comply with conditions that impose financial obligations upon the offender unless such failure is due to his willful refusal to pay. 730 ILCS 5/5--6--4(d), 5--6--4.1(d) (West 2008). Consequently, as a condition precedent to revocation, the State is obligated to prove that a defendant willfully violated a condition that implicates a financial obligation. *People v. Susberry*, 68 Ill. App. 3d 555 (1979).

In *Clark*, we addressed the issue of whether a probation order that required a defendant to obtain a drug and alcohol evaluation imposed a financial obligation triggering the "willful refusal to pay provision." *People v. Clark*, 313 Ill. App. 3d 957, 961 (2000). In that case, we concluded that section 5--6--4(d) applied to drug and alcohol evaluations because a defendant

cannot be evaluated without first paying for it. *Clark*, 313 Ill. App. 3d 957.

Following *Clark*, we acknowledge that the State was obligated to prove that the defendant's failure to obtain an alcohol evaluation, attend treatment, and attend the victim impact panel was willful because financial obligations are implicated. If the record indicates that the defendant's financial situation was the reason he could not meet the conditions of his supervision, then we would be obligated to reverse the revocation of supervision.

However, based upon the record before us, it is clear that defendant's financial situation was not the reason the defendant failed to begin his treatment prior to the deadline of May 11, 2007.

Even though the defendant did not obtain his evaluation until after the State filed its Petition to Revoke Supervision, it is clear from his testimony that financial considerations were not a primary factor in failing to begin the counseling that was recommended by the evaluation. The defendant admits that he did not obtain treatment. In his initial evaluation, the defendant was assessed as a "high risk dependent" and was required to attend 75 hours of classes. Instead of pursuing treatment at that point, the defendant sought a second evaluation because he did not agree with the initial evaluation. In fact, during the revocation hearing, the defendant indicated that he did not need

treatment. Thus, the record supports the trial court's finding that the defendant willfully failed to pursue treatment because he was in denial or disagreement as to his treatment requirements and not because he could not afford to do so.

In sum, the record indicates that the trial court did not abuse its discretion in finding that the defendant willfully failed to undergo treatment and attend a victim impact panel by the deadlines set by the trial court as conditions of his supervision. Being that the defendant's violations were willful, the trial court was obligated to protect the public and respond to the violations with "swift, certain and fair punishments." Therefore, the trial court did not abuse its discretion by revoking the defendant's supervision.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the Peoria County circuit court.

Affirmed.

JUSTICE McDADE, dissenting:

The majority holds that defendant, David Gillham, did not complete his substance abuse treatment because he did not believe that he had a need for 75 hours of counseling (or ostensibly, any counseling) and therefore willfully refused to pay. It affirms, on that basis, the decision of the trial court revoking the

defendant's court supervision. I do not disagree that this belief on defendant's part was one reason for his failure to complete treatment. Nonetheless, I dissent from the decision affirming the trial court because the defendant's unrefuted testimony does not support a finding of willful refusal to pay.

I start with the undisputed fact that defendant's only income was \$622 a month from Social Security.

Defendant testified that he was *pro se* at the time he was given court supervision and received the court's order setting the conditions of that supervision. He testified that his only income was \$622 *per* month (an annual income of \$7,464) and that he was unable to pay his fines and the cost for treatment at the same time. He testified that he was paying \$50 to \$75 per month against the fines and had reduced the obligation by \$900. That he had made, and was continuing to make, these payments appears to have been undisputed.

Defendant acknowledged that he did not get the substance abuse treatment by the deadline set in the court's order. The State made no showing - nor did the court find - that defendant's election to pay the fines first was a willful refusal to pay for the substance abuse treatment. Indeed, the State took the position that it was not required to make such a showing because the simple failure to complete the treatment by the deadline was enough to violate the condition of supervision. The State's

argument would be valid if defendant had not raised the defense that satisfaction of the conditions implicated financial obligations. See *People v. Clark*, 313 Ill. App. 3d 957, 961 (2009).

I believe defendant's unchallenged claim that he could not afford to satisfy all the conditions simultaneously, and that he did not realize the fines did not have to be paid first, defeats a finding of willful refusal to pay for his treatment.

With regard to his failure to complete treatment by the deadline, defendant sought and was granted leave to secure a second evaluation. There are two points to be made here. First, the fact that defendant sought leave only after receiving the notice of revocation is fully consistent with his testimony that he had not previously understood that, where he could not pay for everything at once, he was not free to choose to pay the fines first.

While such ignorance clearly does not excuse the actual violation of the condition of supervision, it is clearly relevant to a determination of willfulness. Defendant's testimony in *this* regard was unchallenged by the State.

Second, defendant acknowledged that he had been assessed a "high risk dependent," requiring him to undergo - and pay for - 75 hours of treatment. He sought the second evaluation (for which he would have to pay) because a lower assessment could

require him to undergo - and pay for - only 40 or even 20 hours of treatment. If the evaluation confirmed his own, apparently delusional, belief that he needed no treatment, he obviously would have no obligation to pay at all. I believe that his desire to reduce or eliminate costs in the face of income below the poverty level<sup>2</sup> does not equate to a willful refusal to pay. His efforts do not seem significantly different from attempts to find as many reductions in our income tax obligations as are legally available. An effort to reduce the tax obligation is not a willful refusal to pay it.

The trial court's finding of willful refusal to pay was against the manifest weight of the evidence and thus an abuse of discretion. I would reverse the decision and, therefore, respectfully dissent.

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<sup>2</sup>According to the U.S. Department of Health and Human Services, the U.S. poverty level for a family of one was \$10,830.