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2011 Ill. App. (4th) 100144-U

Filed 7/8/11

NO. 4-10-0144

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
REBECCA J. LEE,	)	No. 05CF2049
Defendant-Appellant.	)	
	)	Honorable
	)	Jeffrey B. Ford,
	)	Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Appleton and Pope concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* Trial court did not have authority to extend defendant's probation for one year, even at her request, without, at the very least, advising her of the consequences of the extension.
- ¶ 2             Defendant, Rebecca J. Lee, appeared before the trial court *pro se* six weeks before her probation term was to expire and asked the court to extend her probation in order to allow her to pay the rest of her court-ordered fines. The probation period was extended, and defendant paid her fines in full. However, during the extended period of probation, defendant tested positive for drugs and the State moved to revoke her probation. Her probation was revoked, and she was sentenced to 18 months in prison. Defendant appeals the court's order extending her period of probation by one year and the consequences that followed. We reverse.

¶ 3

## I. BACKGROUND

¶ 4 On January 26, 2007, defendant entered an open guilty plea to unlawful possession of less than 15 grams of a substance containing cocaine (720 ILCS 570/402(c) (West Supp. 2007)). Privately retained counsel represented defendant . On March 30, 2007, the trial court sentenced her to 30 months' probation pursuant to the Drug Court Treatment Act (the Act) (730 ILCS 166/1 through 40 (West 2006)), with the condition she pay the fines, fees, and court costs within 24 months. On April 2, 2007, defendant appeared before the drug court and was admonished of the conditions of her probation, which included payment of the financial obligations of her sentence within the first 24 months of probation. Defendant signed the written drug court certificate of probation in which she agreed to all of the terms and conditions of the program and acknowledged her understanding of what the court could do regarding modifying conditions, reducing the period of probation, discharging her from probation, or revoking probation.

¶ 5 On June 20, 2009, after several attempts at both inpatient and outpatient drug treatment, defendant successfully completed all qualifications of the drug court program and graduated. Her probation continued. On July 20, 2009, defendant paid \$10 toward her court-ordered payments of \$1,670. This was her first payment toward her financial obligations.

¶ 6 On August 10, 2009, although no hearing was scheduled, defendant appeared before the trial court *pro se* and requested her probation be continued for a year in order to comply with the financial obligations of her sentence. The court continued her probation stating "you need to contact – keep in contact with Mike [apparently her probation officer] and everything." The court asked a docket entry be made showing, at request of defendant, probation is

extended for one year until August 10, 2010, for completion of payment. A written amended order of conditions was also entered. The amended order of conditions stated the order was amending the probation order entered on March 30, 2007, to

"reflect the following:

1. [Defendant's] probation will be extended for one year from today until 8/10/10 to allow for completion of payments."

Defendant signed the written order acknowledging a violation of "any of the conditions contained in this certificate \*\*\* can result in the filing of a Petition to Revoke my Sentence."

¶ 7 On December 9, 2009, counsel for defendant filed a motion to "vacate" defendant's probation on the ground she completed all payments ordered by the court. On December 21, 2009, the trial court set the matter for a January 6, 2010, hearing. On December 31, 2009, the State filed a petition to revoke probation alleging five urine samples collected between October 2, 2009, and December 22, 2009, tested positive for cannabis.

¶ 8 At the January 6, 2010, hearing, defense counsel argued defendant's probation should be terminated because the only term left on her probation after the extension was to complete her payments, which she had done. The court disagreed, finding its order stated her probation was extended for one year and the extension included all of the terms of her original probation. Defendant's motion was denied.

¶ 9 On January 19, 2010, the petition to revoke probation was heard. The trial court again rejected defendant's argument the August 10, 2009, extension of probation extended only the requirement she make payments on her financial obligations. The court stated the extension extended "the entire probation" for one year, including all the terms of probation not just

payment. The court stated it retained subject-matter jurisdiction after the original period of probation ended to enforce the payment condition of payment and, therefore, it would be illogical to extend only that sole condition of probation. The court did acknowledge its written order from August 10 was "probably not worded the best" to get this point across to defendant. The court revoked defendant's probation and, on February 16, 2010, resentenced defendant to 18 months' imprisonment. This appeal followed.

¶ 10

## II. ANALYSIS

¶ 11 On appeal, defendant argues her due-process rights were violated when the trial court extended her probation without the benefit of notice, a hearing, counsel, admonishments, or a finding of a violation of probation. Defendant argues the extension of her probation was invalid, and the court lost subject-matter jurisdiction over her case when the original term of probation ended on September 20, 2009, and there was nothing to revoke on January 19, 2010. The court's orders revoking probation and resentencing her to prison must be vacated. We agree.

¶ 12 The question of whether a defendant's due-process rights have been violated is a question of law which is reviewed *de novo*. *People v. Hall*, 198 Ill. 2d 173, 177, 760 N.E.2d 971, 973 (2001).

¶ 13 The purpose of the Act is "to create specialized drug courts with the necessary flexibility to meet the drug problems in the State of Illinois." 730 ILCS 166/5 (West 2010). Section 35 of the Act governs the violation, termination, and discharge of a defendant from the drug court program. 730 ILCS 166/35 (West 2010). In accordance with section 25(c) of the Act, (730 ILCS 166/25(c) (West 2010)) defendant signed the drug court certificate of probation, in which she agreed to all of the terms and conditions of the program and acknowledged her

understanding the court could "at any time during the period of probation revoke or modify any conditions of probation or reduce the period of probation or \*\*\* discharge [her] from probation." The flexibility given to the trial court as envisioned in section 5 of the Act results in modification of conditions of probation as the court did in this case by modifying its original order to require defendant not enter any establishments serving alcohol and changing the dates for reporting to drug court from weekly to twice per month. However, our review of the Act does not reveal any section which authorizes a court to extend a period of probation. Neither does the acknowledgment in the drug court certificate of probation set forth any condition under which the court may extend a period of probation.

¶ 14 Thus, we must look to the more general provisions of the Unified Code of Corrections (Unified Code) in regard to probation. Defendant pleaded guilty to a Class 4 felony and the maximum period of probation allowed for such an offense is 30 months (see 730 ILCS 5/5-6-2(b)(2) (West 2006)), which she received. Section 5-6-2(e) of the Unified Code (730 ILCS 5/5-6-2(e) (West 2010)) provides a court may extend a period of probation beyond that provided in section 5-6-2(b) only upon a violation of a condition of probation. The section does not explain what process must occur before the court can extend probation. It would appear the court must actually find a violation of probation before extending a period of probation. In order to make a finding of a probation violation, a court must first give notice to a defendant and hold a hearing on the issue where the State must prove the violation by a preponderance of the evidence. See 730 ILCS 5/5-6-4(a)(2), (a)(3), (b), (c) (West 2010).

¶ 15 Where a party requests to modify a condition of probation, the court cannot do so until "after notice and a hearing." 730 ILCS 5/5-6-4(f) (West 2010). The length of a probation

term is not designated by the Unified Code as a condition of probation (see 730 ILCS 5/5-6-3 (West 2010)) and, therefore, a trial court cannot alter the length of a defendant's probationary term without notice and hearing and a finding of a violation of probation. See *People v. Lipscomb*, 332 Ill. App. 3d 322, 325, 772 N.E.2d 936, 938 (2002).

¶ 16 The State contends defendant appeared voluntarily before the trial court, and requested an extension of her probation term and then agreed to it when it was granted. The State suggests this should obviate any other requirement of due process. However, under similar circumstances as those found in this case, our court has already determined more process is necessary. In *Lipscomb*, the defendant, a drug offender, was in a "rehabilitation alternative probation" program and signed a contract much like the drug court certificate signed by defendant here which provided any report of his noncompliance would permit the court to modify or revoke any treatment plan or sentence of probation. *Lipscomb*, 332 Ill. App. 3d at 323, 772 N.E.2d at 937. Near the end of his probationary term, the defendant appeared in court without counsel and agreed to have his probation extended an additional six months, to October 13, 2000, in order to receive more treatment for his drug problem. *Ibid.* By September 28, 2000, two petitions to revoke probation had been filed in the defendant's case. *Ibid.* The defendant argued when his probation term was extended no petition was pending alleging a violation of probation, and the court never concluded he violated his probation, thus the court lacked authority to extend his probation. *Ibid.* He contended his probationary term had expired in April 2000. *Ibid.* The court revoked his probation and sentenced him to two three-year concurrent terms in prison. *Lipscomb*, 332 Ill. App. 3d at 323, 772 N.E.2d at 937.

¶ 17 On appeal, the defendant in *Lipscomb* made the same arguments. This court

found in defendant's favor. The *Lipscomb* court noted in *Hall*, "the supreme court held that to comport with due process a defendant at a probation revocation hearing must be advised of various rights he is giving up if he enters an admission to the allegations of the petition as well as a factual basis for the violation." *Lipscomb*, 332 Ill. App. 3d at 325-26, 772 N.E.2d at 939, citing *Hall*, 198 Ill. 2d at 181, 760 N.E.2d at 975. The *Lipscomb* court found the defendant's agreement to his need for an extension of his period of probation was, in effect, an admission to a probation violation and his probation was extended without the admonishments required in *Hall*. *Lipscomb*, 332 Ill. App. 3d at 326, 772 N.E.2d at 939. The court noted the defendant's contract had not mentioned any waiver of his right to notice and a hearing before the extension of his period of probation. *Ibid*. The court went on to hold, although a defendant can waive his constitutional right to a probation hearing, due process requires he must be given the waiver admonishments required in *Hall* at the time he enters into the contract. *Ibid*. That did not occur in *Lipscomb*. *Ibid*. Therefore, the court found the extension of the defendant's probation beyond the expiration of its original term was not proper, and the probation-revocation proceeding commencing during that extended period was invalid. *Ibid*.

¶ 18           The facts of *Lipscomb* are extremely similar to those of this case. Here, defendant did not receive the *Hall* admonishments either when she signed her contract or when she appeared *pro se* in court and her probation period was extended. These admonishments included making sure (1) a defendant understands the reasons alleged for revoking the petition; (2) a defendant understands he has the right to a hearing and counsel where the State must prove its allegations; (3) a defendant's admission is voluntary; (4) a defendant understands the consequences of his admission; and (5) a factual basis exists for the admission. *Hall*, 198 Ill. 2d at

181, 760 N.E.2d at 975. Following *Lipscomb*, we find the trial court's extension of her period of probation was improper.

¶ 19 When a trial court is asked by a defendant to extend the period of her probation to complete a condition of probation, she is essentially stating she has not fulfilled that condition of her probation and will not do so prior to the period of probation expiring. In this case, defendant was to have paid her financial obligations within the first 24 months of probation, and she was within six weeks of the end of the 30-month probationary period when she asked and agreed to extend the probation period because she had not paid her fines and fees. She was essentially admitting a probation violation in advance. She should have been given the admonishments as provided in *Hall* in a revocation of probation proceedings. At the very least, she should have been given admonishments as to the consequences of her decision. Defendant could waive these rights if she had been made aware of them and *then* decided to waive them. Defendant did not receive any admonishments in regard to lengthening her period of probation at any time. She did not waive or forfeit anything and she was afforded none of the rights enumerated in *Hall*. Therefore, the court acted improperly in extending defendant's probation. Therefore, her period of probation, as originally set by the court, expired prior to the State's petition to revoke probation. The revocation of her probation and resentencing to 18 months' imprisonment were in error.

¶ 20 We reverse the trial court's judgment.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the trial court's judgment.

¶ 23 Reversed.