

No. 1-08-2834

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 06 CR 24787
)	
KEITH MACON,)	Honorable
)	Sharon M. Sullivan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Hoffman and Karnezis concurred in the judgment.

ORDER

¶1 *Held:* The probation officer had the authority to file a petition alleging violation of probation by defendant, which effectively tolled defendant's probationary period. Therefore, the circuit court had the authority to order a revocation of defendant's probation and to impose sentence for the underlying offense.

¶2 This order is entered pursuant to the Illinois Supreme Court's supervisory order directing this court to vacate the judgment of the April 27, 2010 order in this case and to reconsider our decision in light of *People v. Hammond*, 2011 IL 110044.

¶3 Defendant Keith Macon pled guilty to violating his probation and was sentenced to 120 days'

imprisonment for the underlying conviction of possession of a controlled substance. On appeal, defendant contends that this court should reverse the revocation order because the probation officer lacked the authority to file the petition alleging a violation of probation (VOP) and seeking revocation of probation. Defendant also contends that because a valid petition seeking to revoke his probation was never filed, his probationary term was never tolled and thus expired, permanently divesting the court of authority to revoke his probation. We affirm the circuit court's judgment revoking defendant's probation and imposing the sentence on the underlying offense.

¶4 Defendant pled guilty to possession of less than 15 grams of heroin on March 13, 2007. He was sentenced to 24 months' probation. In July 2008, a probation officer filed a VOP petition because defendant failed to report to the probation department in December 2007, March 2008, and April 2008. Defendant also failed to perform any community service, follow up on a drug referral program, or make any payment against the imposed fine. The circuit court granted the probation officer's VOP petition request to "issue a warrant for the person of the probationer-respondent to appear and answer the alleged violations in open court at a hearing to determine whether or not the probation shall be revoked and if so, what new sentence and modifications shall be imposed."

¶5 Following a Supreme Court Rule 402 (eff. July 1, 1997) conference on September 2, 2008, defendant pled guilty to violating his probation. The circuit court subsequently sentenced him to 120 days' imprisonment.

¶6 On appeal, defendant contends that the order revoking his probation should be reversed because the probation officer lacked the authority to file the VOP petition at issue. Defendant maintains that only the State's Attorney, and not probation officers, can file petitions to revoke

probation. Therefore, defendant requests that this court vacate the order finding that his probation was terminated unsatisfactorily. The State counters that the probation officer had the authority to file the VOP petition at issue in order to notify the circuit court of defendant's non-compliance with the terms of his probation.

¶7 A judgment is void if the court entered it without personal or subject matter jurisdiction. *People v. Santana*, 388 Ill. App. 3d 961, 964 (2009). It is well established that the circuit court's jurisdiction over a probationer is coexistent with the duration of his sentence of probation. *People v. Thoman*, 381 Ill. App. 3d 268, 274 (2008); citing *People v. Johnson*, 265 Ill. App. 3d 509, 511 (1994). Therefore, unless the probationary term has been tolled, a trial court does not have authority to revoke the defendant's probation after the original term has expired. *People v. Herrin*, 385 Ill. App. 3d 187, 190 (2008); *Thoman*, 381 Ill. App. 3d at 274; *Johnson*, 265 Ill. App. 3d at 511; *Martinez*, 150 Ill. App. 3d at 517-18.

¶8 Section 5-6-4(a) of the Unified Code of Corrections (the Code) provides two methods by which a period of probation may be tolled: (1) personal service on the defendant of a petition charging a violation of probation, or (2) the issuance of a warrant, a summons or a court-ordered notice by the probation department requiring the defendant's appearance at a hearing on the petition. 730 ILCS 5/5-6-4(a) (West 1996); *Thoman*, 381 Ill. App. 3d at 274.

¶9 A probationary term can be revoked only upon the filing by a proper party, a petition charging a violation of a condition of probation. *People v. Dinger*, 136 Ill. 2d 248, 259 (1990); *People v. Bedell*, 253 Ill. App. 3d 322, 336 (1993). A warrant, summons, or notice issued pursuant to section 5-6-4(a) is operative only if the underlying pleading is valid. See *Herrin*, 385 Ill. App. 3d

at 190. Section 5-6-4(a) does not specify who may file a petition charging a violation of a condition of probation. 730 ILCS 5/5-6-4(a) (West 1996)); *Dinger*, 136 Ill. 2d at 255; *Herrin*, 385 Ill. App. 3d at 190.

¶10 We agree with the State's contention. Our supreme court has recently held that a probation officer possesses the authority "to file a petition charging a violation of a condition of probation by one whom he or she supervises." *Hammond*, 2011 IL 110044, ¶ 46. In reaching this holding, the *Hammond* court looked to the explicit language of subsection (i) of section 5-6-4 of the Code, which provides that "[i]nstead of filing a violation of probation *** an agent or employee of the supervising agency with the concurrence of his or her supervisor may serve on the defendant a Notice of Intermediate Sanctions." 730 ILCS 5/5-6-4(i) (West 2006). It found that the term "supervising agency" under section 5-6-4(i) of the Code was the "probation or court services department, and that the statute authorizes that entity to pursue two options in the event a probationer violates a condition of probation: file a [VOP] pursuant to subsection (a), or offer intermediate sanctions pursuant to subsection (i)." *Hammond*, 2011 IL 110044, ¶ 47; see 730 ILCS 5/5-6-4(a), (i) (West 2006). Further, the *Hammond* court found that while the executive authority "to proceed with, or move for the dismissal of," an action charging a violation of probation always rests with the State's Attorney, probation officers' explicit statutory duty to take charge of and watch over all probationers, to preserve complete and accurate records during the probationer's probation, and their implied authority as peace officers under Illinois law, provide support that they possess the authority to file a VOP petition on whom they supervise. *Id.* at ¶¶ 45-46; see 730 ILCS 110/12(5) (West 2006); 730 ILCS 110/12(4) (West 2006); 730 ILCS 110/12(9) (West 2006).

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¶11 Accordingly, we find that the probation officer was authorized to file the VOP petition at issue. Thus, defendant's probationary term had been tolled and the circuit court had authority to revoke defendant's probation. Therefore, we affirm the judgment of the circuit court in revoking defendant's probation and in imposing the sentence on the underlying offense.

¶12 Affirmed.