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2012 IL App (3d) 100739-U

Order filed March 27, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0739
v.	)	Circuit No. 07-CF-2625
	)	
MICHAEL LAWRENCE,	)	Honorable
	)	Stephen D. White,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it sentenced defendant upon the revocation of his probation.

¶ 2 Defendant, Michael Lawrence, was charged with burglary (720 ILCS 5/19-1(a) (West 2006)). On May 28, 2008, defendant entered a guilty plea, and in exchange he received a sentence of 36 months' probation as well as fines, costs and restitution that included a $324 public defender fee. While on probation, defendant violated its terms, and the circuit court of

Will County revoked the probation and set the matter for resentencing.

¶ 3 Upon resentencing, the trial court stated that it had considered the factors in aggravation and mitigation as outlined by statute and case law, including the financial impact on the Department of Corrections, rehabilitation of defendant, and all other factors. Defendant was sentenced to three years in the Department of Corrections. Defendant appeals, arguing that the trial court abused its discretion by sentencing him based solely on his postplea conduct instead of the underlying offense, and that the $324 public defender fee assessed as part of the probation order should be vacated. We affirm defendant's sentence.

¶ 4 ANALYSIS

¶ 5 Defendant first contends that the trial court abused its discretion by sentencing him based solely on his postplea conduct instead of the underlying offense. Upon the revocation of a sentence of probation, the trial court may resentence a defendant to any sentence that would have been appropriate for the original offense. *People v. Risley*, 359 Ill. App. 3d 918 (2005). However, the sentence imposed must not be punishment for the probation violation. *Id.* We will not disturb a sentence within the statutory range for the offense unless we are strongly persuaded that the sentencing judge intended to penalize the defendant for violating his probation. *Id.*

¶ 6 Here, the trial court did not abuse its discretion when it sentenced defendant. Burglary is a Class 2 felony (720 ILCS 5/19-1(b) (West 2006)) with a sentencing range of not less than three years and not more than seven years (730 ILCS 5/5-8-1(a)(5) (West 2006)). Defendant's sentence was at the bottom of this range. Further, we do not find that the trial court's sentence was punishment for defendant's probation violation. During sentencing, the trial court did not allude to defendant's probation violation and simply stated that it had considered all of the factors in

aggravation and mitigation. Therefore, since there is no indication that the trial court penalized defendant for violating his probation, we affirm the sentence. Additionally, we will point out the obvious: defendant received the *minimum sentence*. He could not have been prejudiced by any real or imagined error in sentencing.

¶ 7 Defendant next argues that we should vacate the $324 public defender fee imposed by the trial court in its probation order. When a court revokes a defendant's probation, as it did in this case, a new sentence is imposed. *People v. Gazelle*, 165 Ill. 2d 93 (1995). Therefore, any condition that was part of the prior probation order is abandoned and is not part of the new sentence unless the trial court imposes the condition in the new sentencing order. *People v. Felton*, 385 Ill. App. 3d 802 (2008). Here, we find no standing order requiring defendant to pay a public defender fee; therefore, we cannot vacate that which does not exist.

¶ 8 CONCLUSION

¶ 9 The judgment of the circuit court of Will County is affirmed.

¶ 10 Affirmed.