

NOTICE
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2012 IL App (4th) 100676-U

Filed 3/27/12

NO. 4-10-0676

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
MONURICE HOUSTON,)	No. 08DT93
Defendant-Appellant.)	
)	Honorable
)	Joseph P. Skowronski,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* As no meritorious issues can be raised on direct appeal, we grant the office of the State Appellate Defender's motion to withdraw as defendant's counsel on appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967), and affirm.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground that no meritorious issues can be raised in this case. For the reasons that follow, we agree.

¶ 3 I. BACKGROUND

¶ 4 In November 2008, defendant, Monurice Houston, pleaded guilty to driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2008)). Pursuant to the plea agreement, the trial court sentenced defendant in this case to two years of court supervision, required him to complete an alcohol evaluation and follow-up treatment within six months, and sentenced

defendant to conditional discharge in two other cases. Further charges were nol-prossed.

¶ 5 In September 2009, the State filed a petition to revoke defendant's supervision in this case. The State alleged defendant had failed to complete required alcohol treatment. That same month, the trial court held a hearing on the petition to revoke. Defendant, who was the sole witness, testified he had otherwise satisfied the conditions of his supervision but had not completed the required alcohol treatment. The court found the State had proved defendant violated his supervision by a preponderance of the evidence and granted the State's petition to revoke.

¶ 6 In July 2010, the trial court resentenced defendant to two years of intensive probation. Following sentencing, the court advised defendant that if he wished to appeal his sentence he was first required to file a motion to withdraw his admission to the petition to revoke.

¶ 7 Later that month, defendant filed a motion to reconsider his sentence. It alleged he preferred to serve 364 days in jail, with credit for 34 days served, rather than probation. At an August 2010 hearing, defendant and his attorney disputed whether defendant in fact preferred jail time to intensive probation—defendant now insisted he would rather serve probation as, apparently, his initial preference for jail resulted from a misunderstanding of the sentencing credit defendant accrued. The trial court stated, "The fact that you don't like your sentence isn't grounds for a motion to reconsider a sentence." Accordingly, the court denied the motion.

¶ 8 Defendant filed a notice of appeal, and the trial court appointed OSAD to serve as his attorney on appeal. In July 2011, OSAD moved to withdraw, attaching to its motion a brief in conformity with the requirements of *Anders v. California*, 386 U.S. 738 (1967). The record

shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by August 17, 2011, but defendant has not done so. After examining the record and executing our duties in accordance with *Anders*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 9

II. ANALYSIS

¶ 10 OSAD contends the record shows no meritorious issues that can be raised on appeal and any appeal would be frivolous. It identifies four potential issues arising from the trial proceedings but asserts none of these presents a possibly meritorious claim on appeal. We agree with OSAD. Further, we identify a fifth possible argument but conclude it would not merit reversal.

¶ 11 First, OSAD identifies a possible argument that the State failed to prove defendant violated his supervision by a preponderance of the evidence. See 730 ILCS 5/5-6-4.1(c) (West 2008) ("The State has the burden of going forward with the evidence and proving the violation by the preponderance of the evidence."). Because the trial court's findings are entitled to deference, we would reverse the court's determination of the sufficiency of the evidence only if, viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the supervision violation was proved by a preponderance of the evidence. See *People v. Reher*, 361 Ill. App. 3d 697, 700, 838 N.E.2d 206, 209 (2005) (addressing the sufficiency of the evidence to withstand an attack on the defendant's conviction).

¶ 12 In this case, we agree with OSAD that defendant could not meritoriously argue the evidence was insufficient to establish his supervision violation. Defendant's supervision was revoked because the trial court found he had failed to complete alcohol treatment within the

allotted time period. Defendant himself testified he had not undergone the treatment due to his imprisonment in a separate case. Therefore, the record does not support a colorable claim that the court's finding was erroneous based on the insufficiency of the evidence.

¶ 13 Second, OSAD identifies a possible argument that the trial court abused its discretion in resentencing defendant to two years of intensive probation. See *People v. Rathbone*, 345 Ill. App. 3d 305, 313, 802 N.E.2d 333, 340 (2003) ("We afford the trial court's sentencing decision substantial deference and weight and will not disturb its decision absent an abuse of discretion."). At resentencing on revocation of probation or supervision, the trial court may sentence the defendant to any sentence that would have been appropriate for the original offense. See *id.* (discussing potential penalties by reference to the sentencing range for the underlying offense). While the court cannot punish the defendant independently for the violation that led to a probation or supervision revocation, the trial court may consider the defendant's behavior while on probation or supervision in determining an appropriate sentence. See *id.*

¶ 14 Here, the trial court sentenced defendant to two years of intensive probation. This sentence was in the permissible range for the underlying offense of driving under the influence. 625 ILCS 5/11-501(c)(1) (West 2008) (defining driving under the influence as a Class A misdemeanor); 730 ILCS 5/5-6-2(b)(3) (West 2008) (providing a misdemeanor offender may be sentenced to up to two years of probation). The court did not appear to consider any impermissible factors in sentencing defendant. Accordingly, we agree with OSAD that no colorable argument could be made that defendant's sentence was erroneous.

¶ 15 Third, OSAD identifies a possible argument that the trial court improperly admonished defendant that he would first be required to file a motion to withdraw his admission

to the supervision violation if he wished to challenge his sentence. OSAD contends this warning inaccurately stated the applicable law because (1) the revocation in this case was based on a finding that the State proved a violation by a preponderance of the evidence, not defendant's admission to the violation, and (2) even if the violation was based on defendant's admission, "a defendant who has admitted violating his *** probation [or supervision] is not required to move to withdraw the admission before appealing the" revocation order. *People v. Harris*, 392 Ill. App. 3d 503, 506-07, 912 N.E.2d 696, 700 (2009). Regardless of the propriety of the court's admonition in this case, however, defendant was properly allowed to challenge his sentence without moving to withdraw his plea and, thus, was not prejudiced by any possible error. We agree with OSAD that this issue does not present a meritorious claim for reversal.

¶ 16 Fourth, OSAD identifies a possible argument that the trial court erred in denying defendant's motion to reconsider his sentence. A motion to reconsider sentence allows the trial court "to reconsider the appropriateness of the sentence imposed and to correct errors made, if any." (Internal quotation marks omitted.) *People v. Soles*, 226 Ill. App. 3d 944, 946, 590 N.E.2d 104, 105 (1992). "A trial court's ruling on a motion to reconsider sentence will not be disturbed absent an abuse of discretion." *People v. Kane*, 404 Ill. App. 3d 132, 139, 935 N.E.2d 1116, 1121 (2010). In this case, defendant's motion to reconsider was based on his asserted preference for a different sentence. He did not assert the sentence imposed was erroneous. Moreover, at the hearing on the motion, defendant recanted his preference to serve jail time rather than probation. Because defendant apparently reversed his position on this matter and failed to present any compelling reason to revise his sentence, we agree with OSAD that defendant could not reasonably argue the court erred in denying his motion to reconsider sentence.

¶ 17 Finally, we have identified an argument defendant could possibly raise that his supervision violation was not willful. Specifically, defendant was unable to complete the recommended alcohol treatment in the time allotted because he was incarcerated on separate charges for some of that period and no treatment program was available to him in prison. He could thus argue that he was not culpable for his violation of the term of his supervision requiring alcohol treatment.

¶ 18 This argument would lack merit. The supervision-revocation statute does not impose any requirement of willfulness except in cases of a defendant's failure to fulfill financial obligations where he was unable to pay. 730 ILCS 5/5-6-4 (West 2008). The supreme court has stated, "Personal culpability is not required for a court to revoke a sentence of probation." *People v. Allegri*, 109 Ill. 2d 309, 314, 487 N.E.2d 606, 608 (1985). In *Allegri*, the supreme court explained "that probation is a privilege that may be revoked when the defendant's acts, culpable or otherwise, require revocation to serve the ends of justice [citation], such as protecting society." (Internal quotation marks omitted.) *People v. Konwent*, 405 Ill. App. 3d 794, 797, 939 N.E.2d 1018, 1021 (2010). We conclude these statements apply equally to questions of supervision revocation. Once a violation is established, whether willful or not, it is left to the trial court's discretion whether to revoke supervision, and the court may consider the defendant's culpability in committing the violation, as well as whether his conduct "frustrated the goals of [supervision]" (internal quotation marks omitted), at this point in its analysis. *Id.* at 798, 939 N.E.2d at 1022.

¶ 19 Here, the State was not required to show defendant willfully violated the term of his supervision requiring his timely participation in alcohol treatment. Accordingly, the trial

court did not err by finding defendant violated his supervision regardless of the fact defendant was unable to comply with the alcohol-treatment requirement due to his incarceration. Further, we conclude defendant could not meritoriously argue that the court abused its discretion in revoking his supervision as a result of this violation. While defendant's culpability is in question due to the unavailability of treatment while he was in prison, his violation nevertheless frustrated the prominent, if not principal, goal of his supervision that defendant address his alcohol use in a treatment program. Accordingly, any argument defendant could raise based on his asserted inability to comply with the terms of supervision would lack merit.

¶ 20

III. CONCLUSION

¶ 21 Our review of the record shows that no meritorious issues could be raised on appeal. Accordingly, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 22 Affirmed.