

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).

2012 IL App (4th) 101031-U

Filed 5/10/12

NO. 4-10-1031

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
JAMES C. HARRIS,)	No. 03CF1888
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgment of the trial court because the court substantially complied with Illinois Supreme Court Rule 402A.

¶ 2 In May 2006, defendant, James C. Harris, pleaded guilty to burglary (720 ILCS 5/19-1(a) (West 2002)) and was sentenced to 24 months' probation. In January 2007, the State filed a petition to revoke probation. In September 2010, defendant admitted violating his probation and the trial court revoked his probation. In November 2010, the trial court resentenced defendant to seven years in prison with credit for time served. Defendant immediately filed a motion to reconsider sentence, which the court denied in December 2010.

¶ 3 Defendant appeals, arguing the trial court failed to comply with the admonishment requirements of due process and Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003).

¶ 4

I. BACKGROUND

¶ 5 In October 2003, defendant was arraigned on two counts of burglary, a Class 2 felony (720 ILCS 5/19-1(b) (West 2002)). At the arraignment, the trial court informed defendant a Class 2 felony is punishable by three to seven years in prison, followed by two years of mandatory supervised release.

¶ 6 In May 2006, defendant pleaded guilty to burglary (count I) (720 ILCS 5/19-1(a) (West 2002)) pursuant to a fully negotiated plea agreement, in which the State recommended defendant be sentenced to 24 months of probation and agreed to dismiss count II. Prior to entering his guilty plea, the trial court advised defendant he was charged with a Class 2 felony, and "could be sent to prison for not less than three nor more than seven years" followed by a two-year mandatory supervised release term, and a fine of up to \$25,000. When asked if he understood these were the maximum penalties, defendant responded, "Yes, sir." The court then accepted defendant's guilty plea and sentenced him to 24 months' probation.

¶ 7 In January 2007, the State filed a petition to revoke defendant's probation because defendant (1) failed to report to the Champaign court services department as required in October, November, and December 2006; and (2) failed to pay monthly probation service fees from May 30 through December 1, 2006. On September 13, 2010, defendant appeared in court and the trial court went over the allegations in the petition to revoke probation. The court advised defendant as follows: "If you were found to have violated your probation, you could be resentenced to anything that was originally a possible penalty which remains the possibility of three to seven years in prison." When asked if he understood what he was accused of, defendant responded, "Yes, your Honor."

¶ 8 On September 17, 2010, defendant appeared in court with his attorney, Scott Schmidt, to admit the allegations in the petition to revoke probation. The trial court admonished defendant at the start of the hearing, "If you admit to violating your probation, then we will have a sentencing hearing, and you could be resentenced for the offense that put you on probation in the first place." The court then explained the constitutional rights defendant would be giving up if he admitted violating his probation. The following colloquy then ensued:

"THE COURT: Now, Mr. Harris, did you understand those rights that I explained that you'll be giving up if you admit to violating your probation?

DEFENDANT HARRIS: I do, your Honor. Will I be doing something wrong by asking a question, though?

THE COURT: Well, why don't you ask Mr. Schmidt first, and he'll relay it to me. Mr. Schmidt.

MR. SCHMIDT: We're ready to proceed.

* * *

THE COURT: All right. So Mr. Harris, you understand that if you admit to violating your probation, then we will go to a sentencing hearing sometime in the future; is that correct, counsel?

DEFENDANT HARRIS: Yes.

THE COURT: And at your sentencing hearing, your penalty range could be anything from possibly more probation, up

to a possible period of incarceration in the Department of Corrections. Is that your understanding of where we are right now?

DEFENDANT HARRIS: Yes, sir. Does it mean how far—how much prison time; I mean, is it three to seven?

THE COURT: Well, you could get—your sentence—your sentence could be probation, it could be conditional discharge, it could be a period of incarceration in the Department of Corrections. It's going to be up to me to decide what the sentence is.

DEFENDANT HARRIS: Yes, your Honor, yes, sir.

THE COURT: Is that your understanding of where we are right now?

DEFENDANT HARRIS: Yes, sir, your Honor."

The court imposed a seven-year prison sentence in November 2010.

¶ 9 Defendant filed a timely motion to reconsider sentence, arguing the seven-year prison sentence was excessive. The trial court denied the motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the trial court failed to comply with the admonishment requirements of due process and Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) and, thus, he should be allowed to withdraw his admission to the petition to revoke probation.

Specifically, defendant contends the trial court should have answered his question concerning the range of prison term prior to accepting his admission to the petition to revoke his probation. We

affirm.

¶ 13 Whether a trial court substantially complied with the admonishment requirements codified in Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) presents a legal question, which we review *de novo*. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007). In determining whether the trial court substantially complied with Rule 402A, a reviewing court may consider the entire record to determine whether a defendant understood the items listed in Rule 402A. *People v. Dennis*, 354 Ill. App. 3d 491, 496, 820 N.E.2d 1190, 1194 (2004). "Each case must be considered on its own unique facts, with the main focus being on the length of time between the admonishments and the admission to violating probation." *In re Westley A.F., Jr.*, 399 Ill. App. 3d 791, 796, 928 N.E.2d 150, 155 (2010) (citing *Dennis*, 354 Ill. App. 3d at 496, 820 N.E. 2d at 1194).

¶ 14 In *People v. Hall*, 198 Ill. 2d 173, 181, 760 N.E.2d 971, 975 (2001), our supreme court held due process requires a trial court to give certain admonishments, similar to those found in Illinois Supreme Court Rule 402 regarding guilty pleas, to a defendant prior to accepting a defendant's admission to a probation violation. These admonishment requirements were later codified in Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003), which provides, in pertinent part, as follows:

"In proceedings to revoke probation, conditional discharge or supervision in which the defendant admits to a violation of probation, ***, there must be *substantial compliance* with the following:

(a) Admonitions to Defendant. The court shall not accept

an admission to a violation *** without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant understands the following:

* * *

(6) the sentencing range for the underlying offense for which the defendant is on probation ***." (Emphasis added.) Ill. S. Ct. R. 402A (eff. Nov. 1, 2003).

¶ 15 " 'Substantial compliance' means that although the trial court did not recite to the defendant, and ask the defendant if he or she understood, an item listed in Rule 402(a), the record nevertheless affirmatively and specifically shows that the defendant in fact understood that item." *Dennis*, 354 Ill. App. 3d at 495, 820 N.E.2d at 1193 (applying the substantial compliance requirement of Rule 402 to case law developed under *Hall* and the subsequently adopted Rule 402A). The goal of the admonishments required in probation revocation proceedings is to ensure that a defendant understands what his admission entails—including the rights he is waiving and the potential consequences. *Id.* at 496, 820 N.E.2d at 1194. Literal compliance with the admonishment requirements is preferable; however, substantial compliance "is achievable by means other than reciting all of the information to the defendant at the time of the admission" and the failure to give the admonition at the time a defendant admits the allegations is not always fatal. *Id.*

¶ 16 The issue then, is whether an ordinary person in defendant's position would have understood the sentencing range for burglary (a Class 2 felony) could include a prison term of three to seven years. Based upon prior admonishments by the trial court, and defendant's own

comments, we find the defendant understood the sentencing range he was facing.

¶ 17 Defendant analogizes his case to *Ellis*, where the appellate court vacated the defendant's conviction and remanded with directions to allow the defendant to withdraw his admission to the petition to revoke. *Ellis*, 375 Ill. App. 3d at 1049, 874 N.E.2d at 986. In *Ellis*, the trial court erroneously informed the defendant in his underlying criminal case that he faced a sentence ranging from probation to 30 years in prison as a Class X offender; however, defendant was not eligible for probation. *Id.* at 1046, 874 N.E.2d at 983-84. During the probation revocation proceedings, the defendant was advised he faced a potential sentence of probation to 7 years in prison, or 14 years in prison if he was eligible for an extended sentence. *Id.* at 1046, 874 N.E.2d at 984. However, defendant was actually required to be resentenced as a Class X offender and, thus, probation was not a possible penalty. *Id.* On appeal, the court held the defendant had never been "correctly admonished concerning the minimum sentence, either in the underlying criminal prosecution or in the probation revocation proceedings. Thus, there was no correct admonition from which to find substantial compliance." *Id.* at 1048, 874 N.E.2d at 985. This case is distinguishable from *Ellis*.

¶ 18 Contrary to *Ellis*, defendant was properly admonished concerning the possible sentence range. Initially, at defendant's October 2003 arraignment, the trial court admonished defendant burglary was a Class 2 felony punishable by three to seven years in prison. In May 2006, prior to accepting defendant's guilty plea, the court advised defendant he "could be sent to prison for not less than three nor more than seven years." On September 13, 2010, defendant appeared in court on the State's petition to revoke his probation and was admonished by the trial court, "If you were found to have violated your probation, you could be resentenced to anything

that was originally a possible penalty which remains the possibility of three to seven years in prison." Four days later, on September 17, 2010, defendant appeared in court with counsel to admit the allegations in the petition to revoke probation and the trial court informed him, "[Y]ou could be resentenced for the offense that put you on probation in the first place." The court continued, "[Y]our penalty range could be anything from possibly more probation, up to a possible period of incarceration in the Department of Corrections." Defendant asked, "Does it mean how far—how much prison time; I mean, is it three to seven?" The court responded it was up to the court to decide what the sentence would be. The court then asked defendant, "Is that your understanding of where we are right now?" Defendant responded affirmatively without complaining to the court that his question was not answered to his satisfaction.

¶ 19 As the State points out, defendant's case is more similar to *In re Westley A.F., Jr.*, 399 Ill. App. 3d 791, 928 N.E.2d 150 (2010). In *Westley*, the respondent was adjudicated delinquent and sentenced to probation. *Id.* at 791, 928 N.E.2d at 151. In June 2007, during the underlying adjudication proceedings, the respondent was admonished about the minimum and maximum penalties that could be imposed. *Id.* at 792, 928 N.E. 2d at 152. On April 28, 2008, the respondent appeared in court on a petition to revoke probation and the trial court advised him of the minimum and maximum penalties. *Id.* at 793, 928 N.E.2d at 152-53. When asked by the court, the respondent stated he understood the possible penalties. *Id.* at 793, 928 N.E.2d at 154. On May 19, 2008, the respondent admitted the allegations in the petition to revoke probation; the court accepted the respondent's admission but did not advise him of the minimum and maximum sentences that could be imposed. *Id.*

¶ 20 In determining whether the trial court substantially complied with Rule 402A

admonishments, the appellate court in *Westley* pointed out the trial court had advised the respondent of the possible sentences prior to his guilty plea, and again at the respondent's first appearance on the State's petition to revoke his probation. *Id.* at 796, 928 N.E.2d at 155-56. On both occasions, the respondent indicated he understood the possible sentences. *Id.* Less than one month passed from the trial court's last admonishment of the sentencing range on April 28, 2008, until the respondent's May 19, 2008, admission to violating the terms of his probation. *Id.* Thus, the court determined "given the short period between when respondent was admonished and when he admitted to violating his probation, and the fact that respondent was similarly admonished when he pleaded guilty, we determine that an ordinary person in respondent's position would have understood the sentencing range he faced." *Id.* at 797, 928 N.E.2d at 156.

¶ 21 In defendant's case, only four days passed from the time defendant was admonished by the trial court on September 13, 2010, until he admitted the allegations in the petition to revoke probation on September 17, 2010. Defendant asked the trial court how much prison time***is it three to seven***? The trial court apparently understood defendant's question to be how much prison time was going to be imposed. As no presentence investigation report had been prepared or sentencing hearing held, the trial court responded probation, conditional discharge, or incarceration could be imposed, *i.e.*, it was not mandatory for the court to impose three to seven years in the Department of Corrections and it would be up to the court to decide the appropriate sentence. An ordinary person in defendant's position, having just received sentencing admonishments four days prior, would have understood he faced a possible prison term of three to seven years. Our finding is further bolstered by defendant's specificity in asking whether his sentence would be three to seven years, which supports the conclusion defendant

understood the possible sentence range. While defendant now argues his question expressed uncertainty about the possible sentence range and, thus, the record does not "affirmatively and specifically" show he understood the applicable sentence range, we are not persuaded. Defendant had an opportunity to complain to the court his question was not answered to his satisfaction, but he failed to do so. Defendant was properly admonished regarding the sentence range on three occasions; October 2003, May 2006 and September 13, 2010. Further, defendant did not mention any lack of understanding regarding the sentence range in his motion to reconsider the sentence.

¶ 22 In sum, defendant was properly admonished regarding the possible sentence range he was facing on three occasions, the most recent having occurred only four days prior to defendant admitting the allegations in the petition to revoke his probation. An ordinary person in defendant's position would have understood he was facing up to seven years in prison. Thus, the trial court substantially complied with Rule 402A.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.