

NOTICE
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2012 IL App (4th) 110594-U

Filed 2/24/12

NO. 4-11-0594

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
JEANNINE D. PEACOCK,)	No. 09DT10
Defendant-Appellant.)	
)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in ruling on defendant's postjudgment motions without holding a hearing where defendant does not possess an absolute right to oral argument on such motions.

(2) The trial court did not err in denying defendant's motion to dismiss where (a) defendant was in violation of her probation by consuming cocaine and (b) the State did not unreasonably delay in filing its petition to revoke.

(3) Defendant's trial counsel did not provide ineffective assistance where the evidence she argues should have been presented at sentencing was attached to her postjudgment motions and therefore before the trial court when it denied those motions.

¶ 2 In June 2009, defendant, Jeannine D. Peacock, pleaded guilty to driving under the influence of alcohol (DUI) and the trial court sentenced her to 18 months' probation. In December 2010, the State filed a petition to revoke defendant's probation. In May 2011, the court resentenced her, *in absentia*, to 364 days in jail. Thereafter, defendant's trial counsel filed

three postjudgment motions, all of which the court denied.

¶ 3 Defendant appeals, arguing (1) the trial court violated her due-process rights by denying her an opportunity to be heard on her postjudgment motions, (2) the court erred in denying her motion to dismiss where (a) her only probation violation was a positive cocaine test and (b) the State unreasonably delayed filing its petition to revoke, and (3) the court erred in denying her motion for reconsideration of sentence where her trial counsel provided ineffective assistance of counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2009, defendant was cited for DUI (625 ILCS 5/11-501(a)(2) (West 2008)) and driving with a blood alcohol level of 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2008)).

¶ 6 On June 30, 2009, defendant appeared with counsel and pleaded guilty to DUI. The trial court sentenced defendant to 18 months' probation, with 12 days in jail. The conditions of defendant's probation required, *inter alia*, (1) she refrain from drinking alcohol or using illicit drugs, (2) she perform 140 hours of community service work within the first 16 months of her sentence, (3) she obtain an alcohol- and drug-abuse evaluation within 60 days of sentencing and follow any treatment recommendations and counseling, and (4) she sign all authorizations for the release of information requested by Court Services pertaining to her compliance with the terms of probation.

¶ 7 On December 28, 2010, the State filed a petition to revoke defendant's probation on the following grounds: (1) defendant tested positive for cocaine on November 10, 2009; (2) defendant performed just 2 hours of community service and failed to provide verification she

completed the remaining 138 hours of public service; and (3) defendant failed to provide Court Services with a copy of her alcohol- and drug-abuse evaluation.

¶ 8 On January 14, 2011, defendant was arraigned on the State's petition to revoke, and the trial court appointed assistant public defender Katie Jessup to represent her. The court granted defendant's request for bond and admonished her about the possibility of trial and sentence *in absentia* if she failed to appear.

¶ 9 On February 16, 2011, defendant appeared in court with Jessup, who moved to continue the hearing on the State's petition to revoke. The trial court continued the matter to March 30, 2011, and continued defendant's bond.

¶ 10 However, defendant failed to appear at the March 30, 2011, hearing on the State's petition. Over defense counsel's objection, the trial court issued a warrant for defendant's arrest and set a \$25,000 bond. The parties appear to disagree over whether the court granted the State's petition at this hearing. However, no report of the proceedings from the March 30, 2011, hearing is included in the record. Neither has appellant provided a bystander's report or stipulated facts. Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005). The record does indicate the court ordered the preparation of a presentence investigation report (PSI) and set the matter for sentencing on May 6, 2011. The docket entry for May 6, 2011, shows the court called the cause for sentencing *in absentia* and found defendant "violated the terms of her sentence." However, the report of the proceedings for May 6, 2011, indicates the court had already granted the State's petition to revoke. The PSI also indicates the revocation hearing was held *in absentia*.

¶ 11 On April 1, 2011, defendant was arrested on the warrant. However, she posted bond and was released. A motion to substitute attorney Walter Ding as counsel for defendant

was also filed. The trial court granted the motion and the public defender's office withdrew its representation.

¶ 12 On May 6, 2011, defendant's counsel appeared at the sentencing hearing. However, defendant again did not appear. Defendant's counsel stated he had spoken with defendant earlier and indicated she was "obviously aware" of the hearing. However, counsel did not know why she was absent from the hearing. The State requested the trial court proceed and sentence defendant *in absentia*. Over defense counsel's objection, the trial court proceeded with the sentencing hearing. The court sentenced defendant to 364 days in jail.

¶ 13 On May 20, 2011, defendant's new attorney, Ora Baer, filed (1) a motion to dismiss the State's petition to revoke, (2) a motion for a new trial, and (3) a motion for reconsideration of sentence. Although defendant was still a fugitive, she signed the verification on the motion to dismiss.

¶ 14 According to a June 1, 2011, docket entry, the trial court struck defendant's motions for failure to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 15 On June 3, 2011, defendant's attorney filed a motion to vacate the trial court's June 1, 2011, order striking defendant's motions, arguing (1) the order denied defendant her due-process rights to notice and a hearing and (2) the procedural safeguards of Rule 604(d) did not apply to probation-revocation proceedings.

¶ 16 The June 10, 2011, docket entry, states: "The Motion to Vacate is allowed. The Motion to Dismiss, the Motion for New Trial and the Motion for Reconsideration of Sentence have been reviewed by the Court. Those motions are denied on the merits."

¶ 17 On July 8, 2011, defendant's counsel filed a "Certification of Attempted Settings,"

stating trial counsel attempted to set the motions filed on May 20, 2011, for a hearing. Counsel maintained he left messages with the trial judge's clerk on May 23, 2011, and June 1, 2011. He also stated he telephoned the clerk on June 3, 2011, and June 13, 2011, and requested a hearing on his June 3, 2011, motion to vacate.

¶ 18 Defendant was eventually arrested and returned to custody on July 26, 2011.

¶ 19 This appeal followed.

¶ 20 **II. ANALYSIS**

¶ 21 On appeal, defendant argues (1) the trial court violated her due-process rights by denying her an opportunity to be heard on her postjudgment motions when it ruled on those motions without holding a hearing, (2) the court erred in denying her motion to dismiss where (a) her only probation violation was a positive cocaine test and (b) the State unreasonably delayed filing its petition to revoke, and (3) the court erred in denying her motion to reconsider sentence where her trial counsel provided ineffective assistance of counsel by failing to present certain evidence at sentencing.

¶ 22 **A. Due-Process Claim**

¶ 23 After the trial court denied defendant's postjudgment motions, defendant's trial counsel filed a "Certification of Attempted Settings" on July 8, 2011, stating he attempted to set the May 20, 2011, motions for a hearing. According to the filing, counsel left messages with the trial judge's clerk on May 23, 2011, and June 1, 2011. He also stated he telephoned the clerk on June 3, 2011, and June 13, 2011, and requested a hearing on his June 3, 2011, motion to vacate. In a June 10, 2011, docket entry, the trial court denied defendant's motions. Defendant argues the trial court violated procedural due process where it ruled on her postjudgment motions without a

hearing. We disagree.

¶ 24 A defendant does not possess an "absolute right to oral argument on [a] motion to reconsider sentence." *People v. Burnett*, 237 Ill. 2d 381, 390, 930 N.E.2d 953, 958 (2010).

Instead, the ultimate decision to allow oral argument on a postsentencing motion is vested within the sound discretion of the trial court. See *Burnett*, 237 Ill. 2d at 390, 930 N.E.2d at 958 ("what can be said in oral argument can be presented in *at least* as orderly, succinct, and coherent a manner when reduced to writing").

¶ 25 In this case, defendant's trial counsel attempted to notice up the postjudgment motions for a hearing. For whatever reason, the motions were not set for a hearing. We note defendant, a fugitive at the time the motions were filed, does not argue she would have appeared in court had the trial court set the motions for hearing. A review of the record shows defendant's motions as well as the numerous exhibits attached to the motions were very detailed and specific. The trial court, already familiar with the case, could examine the motions and exhibits and reasonably reach a decision to deny those motions without holding a hearing. The court did not abuse its discretion in ruling on defendant's postjudgment motions without first entertaining oral argument on the motions.

¶ 26 B. Motion To Dismiss

¶ 27 Defendant argues (1) her only probation violation was a November 10, 2009, positive test for cocaine and (2) the 13 1/2-month delay between the positive test in November 2009 and the December 2010 filing of the State's petition to revoke "could be determined to be unreasonable" and in violation of her due-process rights. We disagree.

¶ 28 "At a probation-revocation proceeding, the State has the burden of proving the

violation by a preponderance of the evidence." *People v. Keller*, 399 Ill. App. 3d 654, 662, 926 N.E.2d 890, 897 (2010) (citing 730 ILCS 5/5-6-4(c) (West 2006)). Because the trial court is in a better position to weigh the evidence and make credibility determinations, this court will not reverse the court's judgment merely because we might have reached a different conclusion. See *People v. Houston*, 118 Ill. 2d 194, 200, 514 N.E.2d 989, 992 (1987). Instead, we will reverse the trial court's judgment only if it is against the manifest weight of the evidence. *People v. Colon*, 225 Ill. 2d 125, 158, 866 N.E.2d 207, 226 (2007). A finding is against the manifest weight of the evidence only if the opposite result is clearly evident. *Keller*, 399 Ill. App. 3d at 662, 926 N.E.2d at 898.

¶ 29 In this case, defendant concedes she tested positive for cocaine but argues that positive test was the only basis for revocation. We note a violation of a single condition of probation is sufficient to warrant revocation. See *In re Seth S.*, 396 Ill. App. 3d 260, 274, 917 N.E.2d 1182, 1193 (2009). The State maintains there was more than one basis for the revocation. However, defendant has not provided a report of the proceedings for March 30, 2011, the date of the hearing on the State's petition to revoke. Defendant acknowledges this failure but argues it was the State's burden to secure the transcript. However, the burden of providing a sufficiently complete record falls on the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959. Any doubt arising from the incompleteness of the record will be resolved against the appellant, including whether the trial court ruled correctly. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959; *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58, 844 N.E.2d 989, 994 (2006).

¶ 30 Assuming, *arguendo*, the positive cocaine test was the only basis for revocation,

defendant's due-process rights were not violated by the State's delay in filing its petition to revoke.

¶ 31 Defendants serving probation are entitled to due-process protections. *People v. Bredemeier*, 346 Ill. App. 3d 557, 561, 805 N.E.2d 261, 265 (2004). However, these protections are more limited than those afforded a criminal defendant during the litigation stage of the prosecution. *People v. White*, 273 Ill. App. 3d 638, 641, 653 N.E.2d 426, 428 (1995). Nonetheless, "[a] defendant has a right to a probation revocation hearing within a reasonable time." *People v. Tillman*, 237 Ill. App. 3d 971, 973, 605 N.E.2d 736, 738 (1992). "However, the reasonableness of the State's delay in filing the petition must be evaluated on a case-by-case basis." *Tillman*, 237 Ill. App. 3d at 974, 605 N.E.2d at 738. A factor to consider is whether the defendant was prejudiced by the delay. *Tillman*, 237 Ill. App. 3d at 974, 605 N.E.2d at 738-39; *Bredemeier*, 346 Ill. App. 3d at 561, 805 N.E.2d at 265.

¶ 32 In this case, in addition to the allegation regarding the positive cocaine test, the State's petition to revoke alleged, *inter alia*, defendant had completed just two hours of public service as of December 28, 2010. Per the terms of her probation, defendant had until October 30, 2010, to complete 140 hours of public service work. It was not unreasonable for the State to wait until the deadline to complete her public service had passed prior to filing the petition to revoke. Under these circumstances, filing of the State's petition on December 28, 2010—approximately two months after the October 30, 2010, deadline—was not an unreasonable delay. Moreover, defendant has not demonstrated how she was prejudiced by this delay. We note defendant was not incarcerated between the time of her offense and the filing of the petition to revoke. Further, the record does not show defendant demanded a hearing after the State filed its petition.

Accordingly, defendant's due-process rights were not violated.

¶ 33 C. Ineffective-Assistance Claim

¶ 34 Defendant argues the trial court erred in denying her motion to reconsider sentence where her trial counsel provided ineffective assistance of counsel. Specifically, defendant argues counsel failed to present evidence of (1) her Prairie Center assessments from February 1, 2010, and September 13, 2010; (2) the treatment hours performed at the Prairie Center; (3) public service work defendant performed; and (4) the negative drug screens and blood-alcohol content tests taken by the Prairie Center from March 29, 2010, through March 18, 2011. Defendant maintains the outcome of her sentencing hearing would have been different had counsel presented that evidence to the trial court.

¶ 35 The United States and Illinois Constitutions guarantee the right to effective assistance of counsel. U.S. Const., amends. VI, XIV § 1; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 685-686 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525, 473 N.E.2d 1246, 1255 (1984). This right extends to the conduct of counsel at sentencing hearings. See, e.g., *People v. Harris*, 225 Ill. 2d 1, 44-49, 866 N.E.2d 162, 187-90 (2007) (discussing and rejecting the defendant's claim of ineffective assistance of counsel at sentencing). To establish ineffective assistance of counsel, a defendant must prove that (1) her "counsel's performance was deficient" and (2) these deficiencies "prejudiced the defense." *Strickland*, 466 U.S. at 687; see also *Albanese*, 104 Ill. 2d at 525, 473 N.E.2d at 1255; *People v. Evans*, 369 Ill. App. 3d 366, 383, 859 N.E.2d 642, 655 (2006). However, we need not consider whether counsel's performance was deficient if the defendant cannot show counsel's performance prejudiced the defense. *People v. Coleman*, 183 Ill. 2d 366, 397-98, 701 N.E.2d 1063, 1079 (1998).

¶ 36 In this case, defendant cannot show her trial counsel's alleged error prejudiced her. Defendant argues her counsel failed to present the following evidence at her sentencing hearing: (1) evidence of the February 1, 2010, and September 13, 2010, Prairie Center assessment; (2) evidence of negative drug and alcohol screens taken by the Prairie Center from March 29, 2010, through March 18, 2011; (3) evidence of defendant's treatment hours at Prairie Center; and (4) evidence of the public service work performed by defendant. The result of defendant's sentencing hearing was a sentence of 364 days in jail.

¶ 37 However, defendant attached each of those pieces of evidence to her motion to dismiss, which was submitted with her motion to reconsider sentence. Specifically, defendant attached the Prairie Center's February 1, 2010, assessment summary as exhibit A. Defendant attached Prairie Center's September 13, 2010, assessment summary as exhibit B. Defendant also attached exhibit C, a report filed in Champaign County case No. 09-JA-21, showing negative blood and alcohol tests from March 29, 2010, through August 27, 2010. Attached as exhibits D1 and D2 were excerpts from a report filed in Champaign County case No. 09-JA-21, which showed negative blood and alcohol tests from September 9, 2010, through March 23, 2011. Defendant also attached exhibit E, a May 17, 2011, letter from the Prairie Center, stating defendant completed 54 hours of treatment. Attached exhibits F and G are April 30, 2011, and May 11, 2011, letters from the Center of Hope Deliverance Ministries stating defendant completed 110 hours of public service between February 5, 2010, and November 14, 2010. Thus, the trial court had this information before it when it denied defendant's motions. As a result of the denial, defendant's sentence remained at 364 days in jail. Thus, we cannot say the result of the sentencing hearing would have been different but for trial counsel's failure to

introduce that information. Accordingly, defendant has failed to establish the prejudice prong under *Strickland*, 466 U.S. at 687.

¶ 38

III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 40 Affirmed.