

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) 110824-U

Filed 8/27/12

NO. 4-11-0824

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
SCOTT A. THOMAS,)	No. 07CF148
Defendant-Appellant.)	
)	Honorable
)	Claudia S. Anderson,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), we grant the office of the State Appellate Defender's motion to withdraw and affirm the trial court's judgment where no meritorious issues could be raised on appeal as to whether defendant's final probation revocation hearing comported with due process and defendant's sentence was excessive.

¶ 2 In May 2007, defendant, Scott A. Thomas, entered a negotiated guilty plea for robbery, a Class 2 felony (720 ILCS 5/18-1(a), (b) (West 2006)); in exchange for defendant's plea, the State promised to recommend probation and dismiss one count mob action, a Class 4 felony (720 ILCS 5/25-1(a)(1), (b) (West 2006)). In July 2007, the trial court sentenced him to 30 months' probation. In October 2009, the State filed a petition to revoke probation, and in March 2010 defendant admitted violating probation and the court resentenced defendant to two years' probation subject to 120 days in jail. In August 2010, the State filed a second petition to

revoke probation, and in November 2010 defendant admitted violating probation. In March 2011, the court resentenced defendant to a nonextended term of five years' imprisonment with credit for 190 days served and two years' mandatory supervised release. Defendant did not file a posttrial motion.

¶ 3 In September 2011, defendant filed a late notice of appeal and the trial court appointed the office of the State Appellate Defender (OSAD) to serve as his attorney. In March 2012, OSAD moved to withdraw as counsel, 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 April 9, 2012, 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.

¶ 4 OSAD asserts the record shows no meritorious issues that can be raised on appeal. Specifically, OSAD contends (1) the probation revocation proceedings comported with due process and Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003)), and (2) defendant's sentence of five years' imprisonment is not excessive. We agree.

¶ 5 We find no colorable argument can be made that the trial court failed to comply with due process and Rule 402A.

¶ 6 Supreme Court Rule 402A codified the admonitions a trial court must give a defendant before the defendant admits the allegations of a petition to revoke probation to comply with due process. *People v. Ellis*, 375 Ill. App. 3d 1041, 1045, 874 N.E.2d 980, 982 (2007); *People v. Hall*, 198 Ill. 2d 173, 181, 760 N.E.2d 971, 975 (2001). Pursuant to Rule 402A, the

trial court must admonish the defendant and determine that the defendant understands (1) the specific allegations in the petition to revoke probation; (2) the defendant has the right to a hearing with defense counsel present; (3) at the hearing, the defendant has the right to confront witnesses and present evidence in his behalf; (4) the State must prove the alleged probation violation by a preponderance of the evidence; (5) upon admitting a violation there will not be a hearing on the petition to revoke probation; and (6) the sentencing range for the underlying offense. Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003). Additionally, pursuant to Rule 402A(b), before a court may accept an admission to a violation, it must determine that the defendant's admission is voluntary and not made on the basis of any coercion or promise. Ill. S. Ct. R. 402A(b) (eff. Nov. 1, 2003). Finally, under Rule 402A(c), the court must determine a factual basis supports the admission. Ill. S. Ct. R. 402A(c) (eff. Nov. 1, 2003). A trial court's compliance with Rule 402A is reviewed *de novo*. *Ellis*, 375 Ill. App. 3d at 1046, 874 N.E.2d at 983.

¶ 7 Here, the trial court, Judge Michael D. Clary presiding, complied with the requirements of Rule 402A. Defendant was fully admonished as to the nature of the violation, the sentencing range of three to seven years' imprisonment for robbery, and the rights he waived by entering an admission. Additionally, the court questioned defendant and determined his admission was voluntary. The court also determined defendant understood no agreement had been made regarding the sentence to be imposed. Further, the court found a factual basis supported defendant's admission. In particular, the State informed the court that defendant failed, as ordered (1) to appear for scheduled probation appointments in June, July, and August 2010; (2) to notify the probation department of his new address; (3) to make monthly probation

payments; and (4) to provide proof he obtained a drug and alcohol evaluation.

¶ 8 Our review of the record shows the trial court substantially complied with the requirements of Rule 402A. Accordingly, no colorable argument can be made that the court failed to comply with due process or Rule 402A at the November 2010 hearing on the State's second petition to revoke probation.

¶ 9 We also find that defendant's sentence is not excessive and comports with statutory sentencing guidelines.

¶ 10 Robbery is a Class 2 felony (720 ILCS 5/18-1(b) (West 2006)), which is punishable by three to seven years' imprisonment (730 ILCS 5/5-8-1(a)(5) (West 2006)). A reviewing court may not alter a defendant's sentence absent an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010). A sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offence. *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22, 959 N.E.2d 703, 710. When resentencing after a revocation of probation, trial courts may consider the defendant's conduct on probation. *People v. Rathbone*, 345 Ill. App. 3d 305, 312, 802 N.E.2d 333, 339 (2003).

¶ 11 At the sentencing hearing, the trial court, Judge Claudia S. Anderson presiding, acknowledged the updated presentence investigation report (PSI). The PSI showed defendant, while on probation in this case (1) failed to complete a general education development (GED) degree; (2) was placed on one year's conditional discharge in Vermilion County case No. 09-CM-265 for an April 2009 charge of criminal trespass to state supported property violation; (3) was placed on one year's conditional discharge in Vermilion County case No. 10-CM-565 for a July

2010 criminal trespass to real property; and (4) was placed on one year's conditional discharge in Vermilion County case No. 10-CM-577 for an August 2010 charge of resisting a police officer. Additionally, defendant testified on his own behalf to explain his failure to attend probation appointments. The court commented "[w]hat really [forms the basis of my sentence today] is the history of non-compliance, and the report is complete with that." After considering the evidence and the parties' arguments, the court sentenced defendant to five years' imprisonment with credit for 190 days served and two years' mandatory supervised release (MSR).

¶ 12 Because defendant's sentence was within the sentencing range for a Class 2 felony, and the trial court did not rely on improper factors when imposing defendant's sentence, no colorable argument can be made that the court abused its discretion in fashioning an appropriate sentence for defendant.

¶ 13 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 14 Affirmed.