

the offense from a Class X felony to a Class 1 felony. The other five counts of the information were dismissed.

¶ 4 On March 11, 2009, the defendant was sentenced to probation for a term of 48 months. Among the mandatory conditions of probation mentioned in the order were that the defendant not violate any criminal statute or ordinance of any jurisdiction and that he conform to all reasonable rules and regulations of the probation department. Other conditions of probation imposed in the written order were that the defendant consume no alcoholic beverages and enter no establishment that sells same as its principal business, and undergo breath and/or urine analysis for the presence of foreign substances at the request of the probation officer but no less often than two times per month.

¶ 5 On February 23, 2010, a petition was filed charging the defendant with having violated the condition of his probation that requires him to conform to all reasonable rules and regulations of the probation department by having, on three occasions, submitted urine samples which tested positive for the presence of cocaine. The petition came on for hearing on March 26, 2010.

¶ 6 Jeff Thompson, the defendant's probation officer, testified that on his initial meeting with the defendant he explained that the defendant was not to consume any illicit substances and that he had to submit to urine analysis. The State presented expert testimony on the testing procedures and results of the defendant's urine analyses, all of which showed the presence of cocaine metabolite.

¶ 7 The defendant presented no evidence but argued that the State had presented no evidence that he had failed to conform to the reasonable rules and regulations of the probation department. The defendant was never informed that the rules and regulations of the probation department require that he not test positive for a cocaine metabolite, nor was there any evidence presented of any such rule or regulation. At best the defendant was

verbally told by the probation officer that he could not use cocaine or any illicit drugs. Such a rule was never put in writing and it was not part of the court's probation order; that order does not state that the defendant could not consume illicit drugs. Furthermore, there was no evidence that the presence of the cocaine metabolite in the defendant's urine was proof that he had in fact ingested cocaine. Accordingly, the defendant argued that there was no evidence that he had violated the terms of his probation. The defendant did acknowledge that the probation order required that he not violate any criminal statute but argued that no evidence had been presented that the defendant had violated any criminal statute or ordinance of any jurisdiction.

¶ 8 The State responded that the defendant's probation officer, Jeff Thompson, testified that he verbally told the defendant that as part of the rules and regulations of the probation department, the defendant was not to consume any illicit substances. In light of the fact that the defendant was on probation for unlawful possession of a controlled substance, this was a reasonable rule and regulation of the probation department which the defendant clearly violated.

¶ 9 The circuit court found that the State had met its burden of proving by a preponderance of the evidence that the defendant had violated the terms and conditions of his probation as alleged in the petition.

¶ 10 On April 19, 2010, the defendant filed a motion to reconsider the circuit court's finding that he had violated the terms of his probation. The motion argues that the State failed to prove by a preponderance of the evidence that the defendant had used cocaine because it presented no evidence that the presence of cocaine metabolite in the defendant's urine can only occur due to the ingestion of cocaine. The motion further argues that the conditions of probation must be given to the defendant in writing, not verbally, and that neither the probation order nor any other writing informed the defendant that he could not

ingest illicit drugs. Where the rules and regulations of the probation department were not provided to the defendant in writing, or included in the probation order, a violation of those rules and regulations cannot support the revocation of probation.

¶ 11 A hearing was held on the motion to reconsider on June 18, 2010. The State argued in response to the motion that the written requirement that the defendant submit to breath and/or urine analysis for the presence of foreign substances no less than twice per month was sufficient to apprise the defendant in writing that he was not to use illicit drugs. The motion to reconsider was denied. After hearing evidence and argument, the circuit court sentenced the defendant to four years in the Department of Corrections.

¶ 12 The defendant appeals, arguing that the circuit court erred in finding that he violated his probation because the defendant was not advised in writing that a condition of his probation was that he not test positive for, or have in his system, a cocaine metabolite. For reasons that follow, we affirm.

¶ 13 The defendant first argues that the certificate of probation required by section 5-6-3(d) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-6-3(d) (West 2010)) did not include as one of its conditions that the defendant not test positive for, or have in his system, a cocaine metabolite. Section 5-6-3(d) of the Code does require that "[a]n offender sentenced to probation *** shall be given a certificate setting forth the conditions thereof." 730 ILCS 5/5-6-3(d) (West 2010).

¶ 14 Relying on *People v. Brown*, 137 Ill. App. 3d 453, 455 (1985), the defendant argues that where a discretionary condition of probation has not been reduced to writing in a section 5-6-3(d) certificate, a petition to revoke probation may not be premised upon an alleged violation of such a condition. In *Brown*, the defendant was placed on probation and the sentencing judge orally announced a list of conditions attached to the defendant's probation. Among those conditions was that the defendant abstain from the use of alcohol. However,

this condition was omitted from the written order of probation. The defendant was later charged with having violated his probation by failing to abstain from alcohol. The circuit court found the defendant guilty and sentenced him to imprisonment.

¶ 15 On appeal, the Third District of this court acknowledged that the defendant was on notice to abstain from alcohol and that "[t]here is nothing ambiguous, uncertain or unauthorized about such a condition." 137 Ill. App. 3d at 455. Nevertheless, the court held that the certificate requirement of section 5-6-3(d) must be strictly construed in light of the particular condition for which revocation was sought. 137 Ill. App. 3d at 455. This is because a sentence of probation constitutes a form of agreement between the offender and the criminal justice system, and "it is important that both parties have a definite, memorialized understanding of what is required of defendant." 137 Ill. App. 3d at 455. Thus, where the court fashions its own conditions or chooses conditions from among the suggested discretionary conditions, it is critical that the certificate contain precisely what the court has provided. 137 Ill. App. 3d at 455. Accordingly, the court held that if a discretionary condition of probation has not been reduced to writing in a section 5-6-3(d) certificate, a petition to revoke probation may not be premised upon any alleged violation of such a condition.

¶ 16 The defendant argues that the written order of probation he received did not include as one of its conditions that he not test positive for, or have in his system, a cocaine metabolite. He argues that because this is not one of the statutorily mandated conditions, but is discretionary, it must be included in the section 5-6-3(d) certificate, and where it is not, a petition to revoke probation may not be premised upon its alleged violation.

¶ 17 However, in *People v. Glover*, 140 Ill. App. 3d 958, 961 (1986), the Second District of this court held differently than did the Third District in *Brown*. In *Glover*, the court held that the certificate requirement of section 5-6-3(d), while it is salutary and should be

followed, is not a mandatory requirement. 140 Ill. App. 3d at 961. The court pointed out that there is nothing in the Council Commentary to section 5-6-3(d) or in the statutory provision itself indicating a legislative intent that the mere failure of a probationer to receive a certificate of the conditions of his probation will result in all such terms being nugatory despite some other appropriate method of advising an offender of the conditions of his probation. 140 Ill. App. 3d at 962.

¶ 18 In *Glover*, the defendant had been charged with violating his probation by violating a criminal law. He argued that refraining from violating criminal laws had not been included as a condition in the written probation order and therefore could not be the basis for a revocation petition. The appellate court acknowledged that the circuit court did not give the defendant a certificate setting forth the conditions of probation as required by section 5-6-3(d), nor did the court specifically inform the defendant orally at the time of sentencing that as a condition of his probation he could not violate any criminal laws. Nevertheless, the court held that the defendant had not contended in the circuit court or on appeal that he did not have knowledge that a mandatory statutory condition of his probation was that he not violate any criminal laws. Further, the evidence showed that the defendant had actual knowledge of this condition of his probation. Accordingly, the defendant's probation was properly revoked.

¶ 19 We are persuaded by the reasoning and analysis contained in the *Glover* opinion that the failure to include a condition of probation in a written certificate does not render that condition nugatory despite some other appropriate method of advising the offender of the conditions of his probation. As in *Glover*, the defendant in the case at bar had actual knowledge that he could not test positive for, or have in his system, cocaine metabolites. He had been verbally advised by his probation officer that he could not use illicit substances. Furthermore, the written probation order in the case at bar advised the defendant that as a

condition of his probation he must comply with all reasonable rules and regulations of the probation department. The defendant's probation officer advised the defendant that one of those rules and regulations was that he not use illicit substances. As in *Glover*, the defendant's argument that his probation could not properly be revoked based on a violation of a condition of probation which was not included in a section 5-6-3(d) certificate must fail.

¶ 20 The defendant next argues that even if he was verbally admonished as to this condition of his probation, it was not an appropriate method of advising him and the verbal condition should not be the basis of a petition to revoke his probation. He argues that this case is similar to *People v. Einoder*, 96 Ill. App. 2d 174 (1968), *People v. Serna*, 67 Ill. App. 3d 406 (1978), and *People v. Susberry*, 68 Ill. App. 3d 555 (1979). We find those cases to be distinguishable from the case at bar.

¶ 21 In *Einoder*, the court entered an order placing the defendant on probation for reckless driving, but the written probation order did not include as a condition of his probation that the defendant was not to drive an automobile during the term of his probation. Subsequently, the State filed a petition to revoke the defendant's probation because he had driven an automobile in violation of the terms of his probation. At a hearing the defendant argued that no such condition had been placed upon his probation and no such condition was included in the written order. The court stated that it remembered orally advising the defendant at the time he was placed on probation that he was not to drive an automobile but the record contained no indication of this. On appeal, the court held that the defendant's probation could not be revoked for driving an automobile where there was nothing in the record which prohibited him from doing so. *Einoder*, 96 Ill. App. 2d at 180.

¶ 22 In *Serna*, the juvenile defendant was placed on supervision with the probation department and told: " 'Listen to your mother, and stay out of trouble. You are going to get rules to follow. You follow those rules. You stay out of trouble.' " 67 Ill. App. 3d at 408.

The defendant was never given, either verbally or in writing, any specific rules to follow. The State sought to revoke the defendant's supervision, charging him with violating the terms and conditions of his supervision by failing to attend school. The revocation was reversed on appeal because the defendant was never supplied with a written order specifying the conditions of his supervision. The defendant could not be found to have violated a term or condition of his supervision of which he was never advised.

¶23 In *Susberry*, the defendant was placed on probation for criminal housing management. A condition of the probation was that the " 'building is to be reinspected six months from today and reports forwarded to the defendant, state's attorney and to the Court.' " 68 Ill. App. 3d at 559. At the sentencing hearing the court verbally stated:

" 'If I find that the building remains in violation, I am not talking about a leaky faucet, I am talking about a serious violation, which would be a detriment to the health and welfare of any occupants, I will then revoke the probation ***.' " 68 Ill. App. 3d at 559.

¶24 The defendant did not receive a written order setting forth the conditions of probation other than that requiring the building to be reinspected in six months. Upon reinspection, the defendant's probation was revoked because the building was in disrepair. On appeal, the court held that the oral conditions read by the sentencing court were vague and indefinite and did not adequately or reasonably inform the defendant of the conditions of his probation. Accordingly, his probation could not be revoked for the violation of these oral "conditions."

¶25 In each of these cases, the oral condition relied upon to revoke probation was either not proven to have been stated to the defendant in court or was vague, indefinite, or overly broad and did not adequately inform the defendant of the rules of conduct with which he must comply. Quite to the contrary, in the case at bar the evidence established quite clearly that the defendant was verbally told by his probation officer that he could not ingest illicit

substances, and this rule is clear and definite and adequately informs the defendant of the rules of conduct with which he must comply.

¶ 26 The State has the burden of going forward with evidence and proving a violation of the terms or conditions of probation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2010). When we review a circuit court's finding that a defendant has violated the terms of his probation, the standard of review is whether the court's ruling is contrary to the manifest weight of the evidence. *People v. Prusak*, 200 Ill. App. 3d 146, 149 (1990). The circuit court's finding that the defendant had violated the terms and conditions of his probation by testing positive for cocaine metabolites in his urine is not contrary to the manifest weight of the evidence. We affirm.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Saline County is hereby affirmed.

¶ 28 Affirmed.