

SIXTH DIVISION
June 28, 2013

No. 1-11-3084

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).

| | | |
|----------------------------------|---|-------------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court |
| |) | of Cook County |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 09 CR 01169 |
| |) | |
| WILLIAM MORGAN, |) | Honorable Michael Brown, |
| |) | Judge Presiding. |
| Defendant-Appellant. |) | |

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed decision of the trial court to revoke defendant's probation where defendant refused to take a urine test, failed to provide proof he completed the drug rehabilitation program, and forfeited his due process argument.

¶ 2 Defendant William Morgan appeals the judgment of the trial court revoking his probation and sentencing him to three years of imprisonment in the Illinois Department of Corrections.

Morgan asserts the trial court's revocation of his probation violated due process or, alternatively, was an abuse of discretion. For the following reasons, we affirm the decision of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On January 6, 2009, the State charged Morgan with one count of retail theft (720 ILCS 5/16A-3(a) (West 2008) (repealed by Pub. Act 97-597, § 6 (eff. Jan. 1, 2012))). Following a Rule 402 conference, Morgan pleaded guilty to the charge and was sentenced to 30 months of probation under a Treatment Alternatives for Safe Communities (TASC) program (20 ILCS 301/40-5, 40-10 (West 2008)). The sentencing order, among other things, required Morgan to comply with and complete the TASC program, report to the Adult Probation Department, and pay any associated fines, costs, or fees; the box on the sentencing order labeled "Submit to random drug testing" was not checked. For the three months since being placed on probation, however, Morgan failed to verify his compliance with the TASC program, did not report to the Adult Probation Department, and never paid his probation fees and court costs. Consequently, on May 28, 2009, the trial court issued a violation of probation (VOP) warrant for Morgan's arrest. The police ultimately arrested Morgan pursuant to the VOP warrant on May 24, 2010.

¶ 5 At a subsequent hearing, Morgan acknowledged his probation violations but requested the trial court allow him another opportunity to comply with the TASC program. The trial court granted Morgan's request and reinstated his probation, but warned him any further violations would result in his incarceration.

¶ 6 The following summer the trial court issued another VOP warrant for Morgan's arrest after Morgan tested positive for cocaine and failed to pay his outstanding probation fees, court costs, and fines. Morgan again acknowledged violating his probation and apologized to the trial court. Despite its previous warning, the trial court did not revoke Morgan's probation at this

time. Instead, the trial court ordered Morgan to meet with his probation officer and follow her instructions for completion of the TASC program. On June 16, 2011, Morgan met with his probation officer who requested he enroll in a detox program at Haymarket Treatment Center. On July 13, 2011, Morgan met with his probation officer again and was asked to provide proof of enrollment in the Haymarket program and a urine sample. According to the probation officer, Morgan refused to comply with either request and did not "indicate *** in any way that he was making efforts at enrolling in any drug program." The probation officer then informed Morgan his refusal to take the urine test amounted to a positive urine drop and thus violated the terms of his probation. Morgan responded that "it didn't matter" because "he only had a few months left of probation" and continued to refuse to provide the probation officer with a urine sample. Consequently, the court issued a third VOP warrant and Morgan was again arrested on August 4, 2011.

¶ 7 Two weeks later, the trial court held a probation revocation hearing regarding Morgan's third alleged probation violation. At the revocation hearing, the probation officer testified she was familiar with the conditions of Morgan's probation and testified regarding the aforementioned details of her June 16 and July 13 meetings with Morgan.

¶ 8 In his testimony at the revocation hearing, Morgan stated he enrolled in the Haymarket program and completed it "from the 8th to the 16th [of June] or something like that." Morgan testified he had been released from the Haymarket program for "maybe a couple of days" before his June 16 meeting with his probation officer. According to Morgan, after his release but prior to the June 16 meeting, he presented proof of completion of the Haymarket program to the trial

court. Morgan, however, "forgot to bring [proof] in June when [he] reported to the probation officer." Morgan testified he also forgot to bring proof of completion to the July 13 meeting. He asserted he did eventually bring proof of compliance to his probation officer on August 4, 2011, the day he was arrested, but never had an opportunity to present it. Finally, Morgan claimed the probation officer "wanted [him] arrested" and never asked him to provide a urine sample, although he "was prepared [to provide one] if that was the case."

¶ 9 After hearing both the testimony of the probation officer and Morgan, the trial court found Morgan failed to "provide proof of enrollment or completion of a drug treatment program as requested and as a part of his probation ***." The trial court also found Morgan refused to give a urine sample upon request. Consequently, the trial court found Morgan had violated the terms of his TASC probation and, after a subsequent re-sentencing hearing, ordered Morgan to serve three years of imprisonment in the Illinois Department of Corrections.

¶ 10

ANALYSIS

¶ 11

I. Violation of Due Process

¶ 12 On appeal, Morgan primarily contends the revocation of his probation violated his due process rights under the Illinois and United States constitutions. According to Morgan, random drug testing and providing proof of enrollment were not conditions of his probation and, therefore, revocation of his sentence on these grounds violated his due process right to adequate notice. Morgan, however, never raised this argument before the trial court during the revocation hearing, nor did he include it in either of his subsequent motions for reconsideration. Morgan, therefore, has forfeited consideration of the issue on appeal. See *People v. Enoch*, 122 Ill. 2d

176, 186 (1988) ("*Both* a trial objection *and* a written post-trial motion raising the issue are required [to preserve] alleged errors that could have been raised during trial." (Emphasis in original.)); see also *People v. Turner*, 233 Ill. App. 3d 449, 452 (1992) (finding "the *Enoch* rule must logically be applied to probation revocation proceedings"). Accordingly, we need not review Morgan's due process claim unless he has established plain error. See 134 Ill. S. Ct. R. 615(a); *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Morgan, however, did not address forfeiture or argue for plain-error review in his opening brief, and has therefore forfeited this argument as well. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); see also, *e.g.*, *People v. Helm*, 282 Ill. App. 3d 32, 34 (1996) ("[Plain error] arguments not raised in the appellant's original brief may not be raised in the reply brief or at oral argument.").

¶ 13 Morgan does not contend he has properly preserved these issues for consideration on appeal. Rather, Morgan asserts because the rule of forfeiture is a "limitation[] on the parties [and] not the court," we should otherwise address the merits of his claims. We acknowledge in some instances, our Supreme Court has nonetheless entertained arguments not properly raised on appeal. See, *e.g.*, *People v. Williams*, 193 Ill.2d 306, 348 (2000) (reviewing a plain-error argument first raised in reply brief). Regardless, this court is not *required* to relax the forfeiture rules in such cases, nor do we find it appropriate to do so here.

¶ 14 Morgan had the burden of establishing plain error. *Hillier*, 237 Ill. 2d at 545. By failing

to "present an argument on how *** the plain-error doctrine is satisfied, he forfeits plain-error review." *Id.* at 545-46. Were we to routinely allow appellants to raise plain error in the reply brief, we would be encouraging appellants to take a wait-and-see approach, shifting the burden to the appellee or reviewing court to discover and address appellant's forfeiture. This lack of candor would defeat the very purpose of forfeiture. Determining forfeiture is one of the "most important tasks of an appellate court panel when beginning the review of a case" as it helps avoid the "unnecessary expenditure of judicial resources." *People v. Smith*, 228 Ill. 2d 95, 106 (2008). Further, as the Illinois Supreme Court recently admonished, "it is a fundamental rule of judicial restraint that a court not reach constitutional questions in advance of the necessity of deciding them." *People v. White*, 2011 IL 109689, ¶ 148. Taking these principles into consideration, because both Morgan's plain error and underlying due process claims have not been properly raised, we deem them forfeited and do not address their merits on appeal.

¶ 15

II. Abuse of Discretion

¶ 16 Morgan alternatively argues the decision of the trial court to revoke his probation was an abuse of discretion. We note from the outset there appears to be a split of authority regarding the appropriate standard of review for a trial court's revocation of probation; some cases apply the abuse of discretion standard, while others apply the manifest weight of the evidence standard. Compare *People v. Gilkey*, 263 Ill. App. 3d 706, 712 (1994) (reviewing the revocation of probation for an abuse of discretion), with *People v. Taube*, 299 Ill. App. 3d 715, 721 (1998) (reviewing whether the revocation of probation was against the manifest weight of the evidence). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful,

unreasonable, or where no reasonable person would take the view adopted by the trial court.

People v. Hall, 195 Ill. 2d 1, 20 (2000). A trial court's determination will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). Nevertheless, the trial court's decision in this case would not violate either of these deferential standards.

¶ 17 Morgan contends the trial court abused its discretion because it erroneously based its decision on: (1) Morgan's refusal to take a drug test; and (2) Morgan's failure to provide proof he completed the Haymarket program. We address each of these arguments in turn.

¶ 18 A. Drug Testing

¶ 19 Morgan asserts he was led to believe random drug testing was not a condition of his probation and, therefore, revocation due to his refusal to submit to a drug test was an abuse of discretion. While the trial court did not check the box labeled "Submit to random drug testing" on the sentencing order, we are not persuaded Morgan was led to believe—nor that he *actually* believed—drug testing was not a condition of his probation. The very purpose of TASC probation is to rehabilitate the convicted offender through drug treatment. See 20 ILCS 301/40-10 (West 2008). Effective drug rehabilitation would by necessity include some form of testing and, indeed, Morgan had already submitted to urinalysis as part of his probation prior to his July 13 refusal. Morgan's present contention he was unaware a urine test would be required as part of his probation is thus belied by the record.

¶ 20 Furthermore, and more importantly, it is irrelevant whether testing was an express

condition of Morgan's probation as his refusal to submit a urine sample sufficiently demonstrated his unwillingness to be rehabilitated. "Probation is an act of grace or a grant of mercy to afford a defendant an opportunity for rehabilitation without incarceration." *People v. Cottrell*, 141 Ill. App. 3d 364, 367 (1986). A direct violation of one's probation is not required for the trial court to revoke one's probation; the trial court may revoke probation where the probationer's actions indicate an inability to be rehabilitated. See *People v. Jurisec*, 199 Ill. 2d 108, 120-21 (2002) ("It has been determined that '[p]ersonal culpability is not required for a court to revoke a sentence of probation' [citations] because *** 'nonculpable conduct on the part of the probationer may frustrate the goals of a probationary sentence.' ") (quoting with approval *People v. Allegri*, 109 Ill. 2d 309, 314 (1984) and *People v. Davis*, 123 Ill. App. 3d 349, 353 (1984)). Even "circumstances beyond the defendant's control may provide an adequate basis for probation revocation where such circumstances frustrate the fundamental purpose or reason for the imposition of a sentence of probation." *Davis*, 123 Ill. App. 3d at 354.

¶ 21 At the revocation hearing, the probation officer testified Morgan refused to provide a urine sample and expressed little concern when warned such a refusal would amount to another probation violation. The trial court found the probation officer's testimony credible and could reasonably conclude Morgan's actions frustrated his own rehabilitation and undermined the purpose of the TASC probation. For this reason, the trial court's revocation of Morgan's probation on this basis was not an abuse or discretion, nor was it against the manifest weight of the evidence.

¶ 22 B. Failure to Provide Haymarket Paperwork

¶ 23 Morgan additionally argues the trial court abused its discretion by revoking his probation based on his failure to produce paperwork signifying completion of the Haymarket program. According to Morgan, he expressed a desire to rehabilitate by initially enrolling in the Haymarket program and the trial court should not have revoked his probation simply because he forgot to provide proof he completed the program. Morgan suggests in his brief the actual condition of the TASC probation is to complete the treatment program, not to provide proof of completion. See 20 ILCS 301/40-10 (West 2008). Nevertheless, such proof of compliance is still necessary to ensure the probationer continues to comply with and fulfill the terms of the probation and successfully moves toward the ultimate goal of rehabilitation. See, e.g., *People v. Neckopulos*, 284 Ill. App. 3d 660, 662-64 (1996) (trial court's revocation of probation not erroneous where defendant started her treatment, but subsequently failed to cooperate with her TASC program, even if failure to cooperate was not willful). The testimony established Morgan did not produce this information at any of his meetings with his probation officer. Morgan also failed to produce such proof in court to support his claim he successfully completed the Haymarket program. These facts not only suggest Morgan never finished the program as required, but they further demonstrate Morgan's reluctance to rehabilitate after having already committed multiple probation violations. The trial court could thus reasonably find Morgan had violated his probation by not completing the Haymarket program and was unlikely to be rehabilitated. Accordingly, the trial court's revocation of Morgan's probation was not an abuse or discretion, nor was it against the manifest weight of the evidence.

¶ 24

CONCLUSION

1-11-3084

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.