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2013 IL App (4th) 111023-U  
NOS. 4-11-1023, 4-11-1024 cons.

FILED  
May 6, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: BRANDON P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	Nos. 09JD148
BRANDON P.,	)	10JD12
Respondent-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Pope and Harris concurred in the judgment.

### ORDER

¶ 1 *Held:* Respondent's due-process rights were not violated when he received a hearing on the State's petition to revoke his probation in the form of a combined hearing with his bench trial on the State's petition for adjudication of delinquency, which was based on the same conduct.

¶ 2 Respondent minor, Brandon P., was placed on probation in two separate juvenile cases (Nos. 09-JD-148 and 10-JD-12) after the trial court found him delinquent. He committed a subsequent offense, which was the subject of both a petition to revoke his probation and a petition for adjudication of delinquency. After a bench trial, the court found respondent had committed the subsequent offense beyond a reasonable doubt, without addressing the petition to revoke probation. Yet, at the dispositional hearing, the court sentenced respondent to an indeterminate term in the Illinois Department of Juvenile Justice (DOJJ) on all three cases. Respondent claims the court

violated his due-process rights by failing to conduct a revocation hearing. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On July 1, 2009, the State filed a petition for adjudication of wardship as to respondent, age 13, in the Vermilion County circuit court in case No. 09-JD-148. The petition alleged respondent was a delinquent minor because on June 30, 2009, he obstructed the duties of a police officer by throwing a can of spray paint at him, a Class A misdemeanor (720 ILCS 5/31-1(a) (West 2008)). On July 27, 2009, respondent admitted he committed the offense and agreed to a disposition of six months' supervision.

¶ 5

On January 21, 2010, the State filed a petition for adjudication of wardship in case No. 10-JD-12, alleging respondent committed aggravated battery upon a teacher, a Class 3 felony (720 ILCS 5/12-4(b)(3), (e)(1) (West 2008)). Simultaneously, the State filed a petition to terminate respondent's supervision in case No. 09-JD-148. The trial court placed respondent in the temporary custody of the juvenile detention center.

¶ 6

At a hearing on February 16, 2010, respondent admitted committing the offense of aggravated battery upon a teacher for the purposes of the State's petition to terminate supervision in case No. 09-JD-148 and for adjudication in case No. 10-JD-12. The State agreed to recommend probation, the terms and conditions of which remained open. The trial court considered the factual basis and respondent's assertions, and found his admission was entered knowingly and voluntarily. The court scheduled the dispositional hearing for April 19, 2010. Respondent was released to the custody of his parents on "total home confinement."

¶ 7

The dispositional hearing for both cases was held on June 14, 2010. Rose Holycross, the juvenile justice services coordinator for the Center for Children's Services, informed the trial

court respondent had violated the terms of his home confinement, was dismissed from intensive outpatient program due to his behavior, and was hospitalized over a month ago. Nevertheless, defense counsel said he "would just like to see it completed" and informed the court he was ready to proceed. Neither party presented evidence and respondent declined to make a statement. The court sentenced respondent to 30 months' probation with several terms and conditions, including a stayed 30 days in the juvenile detention facility. The probation order also prohibited respondent from violating any criminal law in any jurisdiction.

¶ 8 On October 26, 2010, the State filed a petition for revocation of probation in both cases, alleging respondent violated several terms of his probation, namely that he committed two counts of criminal damage to property, Class A misdemeanors (720 ILCS 5/21-1(1)(a), (2) (West 2008)), when he damaged a picture window and a van on October 23, 2010. These charges were the subject of a third Vermilion County case No. 10-JD-219. The trial court ordered respondent detained until the November 2010 adjudicatory hearing.

¶ 9 On November 15, 2010, the State filed a petition to amend the petition for revocation to include allegations that respondent committed the offense of aggravated criminal sexual abuse, a Class 2 felony (720 ILCS 5/12-16(c)(2)(i), (g) (West 2008)) on October 24, 2010, against M.J., a minor under the age of nine. This charge was the subject of a fourth Vermilion County case No. 10-JD-238.

¶ 10 At a hearing on January 11, 2011, the State informed the trial court that it sought to withdraw the petition for adjudication in case No. 10-JD-219, the criminal-damage-to-property case, because the victim, respondent's mother, did not wish to pursue it. The court allowed the State's motion. On January 28, 2011, the court released respondent from the detention facility to "total

home confinement" with his grandparents.

¶ 11 On March 21, 2011, the State filed a motion to detain in case No. 10-JD-238 because, according to the testimony of respondent's probation officer, respondent's grandfather advised he could not control respondent's behavior at home. Respondent had been recently released from the hospital for treatment due to his behavior at school, but upon his return to his grandparents' home, he was defiant, disrespectful, and vulgar. His grandparents asked that respondent be returned to the detention facility. The trial court granted the State's motion and ordered respondent detained pending further proceedings.

¶ 12 On May 10, 2011, the trial court called three cases for hearing, stating as follows: "This is 09-JD-148, 10-JD-12, and 10-JD-238, In the Interest of Brandon [P.] \*\*\* Matter comes on for adjudication pursuant to notice." The State's amended petition to revoke respondent's probation remained pending and was not discussed during the hearing. The court agreed to continue the adjudicatory hearing until laboratory results were returned. However, the court conducted a section 115-10 hearing. See 725 ILCS 5/115-10 (West 2010) (a hearing to determine whether certain hearsay statements regarding the allegations of abuse will be admitted at trial). At the close of the hearing, the court determined the statements of the victim's mother and the police investigator were admissible. Respondent was released to the custody of his parents for "total home confinement."

¶ 13 On August 8 and 19, 2011, the trial court conducted respondent's adjudicatory bench trial in case No. 10-JD-238. The State presented witnesses, whom respondent's counsel cross-examined and respondent presented a witness on his own behalf. At the conclusion of the hearing, the court found respondent "guilty of the offense of aggravated criminal sexual abuse." Respondent's probationary status in his other pending cases (Nos. 09-JD-148 and 10-JD-12) was not mentioned

nor were the State's petitions to revoke. The court scheduled the dispositional hearing for October 3, 2011.

¶ 14 On September 16, 2011, in case No. 10-JD-238, respondent filed a motion for a new trial. Respondent challenged the sufficiency and admissibility of the evidence presented at trial.

¶ 15 On October 3, 2011, the parties convened for a hearing. The transcript included in the record referenced three cases: Nos. 09-JD-148, 10-JD-12, and 10-JD-238. At the start of the hearing, the court stated as follows: "The matter comes on for hearing pursuant to notice on [(1)] a motion for new trial filed September 16, 2011, in 10-JD-238, [(2)] disposition in [No. 09-JD-]148 and [10-JD-12] and, [(3)] depending upon the outcome of the motion, [disposition on No. 10-JD-]238." Though the court noted it anticipated sentencing respondent in case Nos. 09-JD-148 and 10-JD-12, the State's petitions to revoke were not specifically mentioned. However, on respondent's motion, the court continued the hearing.

¶ 16 On October 18, 2011, the trial court conducted the continued hearing. Again, the transcript references all three case numbers however, the court called the case, stating only that the matter had come for hearing on respondent's motion for a new trial in case No. 10-JD-238, and possibly for disposition in that case as well. After considering the arguments of counsel, the court found the adjudication was appropriate and denied the motion for new trial. It proceeded to the dispositional hearing, with respondent's counsel noting his readiness to proceed. The State presented no additional evidence other than the social history report. Respondent called his grandfather as his only witness. During the State's oral recommendation, the prosecutor noted respondent's history, including the prior dispositions sentencing him to probation. The prosecutor stated: "Based on all of that and due to the fact that he has been given two opportunities on probation, I would be

recommending a period in the DOJJ." Respondent's counsel recommended a sentence of probation or, in the alternative, a 90-day evaluation "to see how he does with the sanctions of [DOJJ]." The court reiterated the history of respondent's charges, stating as follows:

"09-JD-148, resisting or obstructing a peace officer. \*\*\* He was placed on six months of continuance under supervision on July 27th, 2009. \*\*\* Once month later, there is a petition filed for aggravated battery to a teacher, Class 3 felony. \*\*\*

He was placed on 30 months of probation June 14th of 2010. Four months later, there's a petition filed seeking to violate [*sic*] his probation based on 10-JD-238, aggravated criminal sexual abuse, a Class 2 felony. That offense was committed while on probation in the two other cases. \*\*\*

\* \* \*

It's the judgment and sentence of the court that you be sentenced to the Illinois Department of Corrections Juvenile Division for an indeterminate sentence in 10-JD-238 for a sentence not inconsistent with a Class 2 felony; in 10-JD-12, for a sentence not inconsistent with a Class 3 felony; and in 09-JD-148, to a sentence not inconsistent with a Class A misdemeanor."

These consolidated appeals followed.

¶ 17

## II. ANALYSIS

¶ 18

Respondent contends his due-process rights were violated when the trial court failed

to conduct a hearing on the State's petitions to revoke his probation before resentencing him. He contends the adjudicatory hearing on the underlying offense was insufficient to satisfy the State's obligation and that the error "was such a serious violation of due process that it requires the dismissal of the petitions to revoke." He correctly asserts our standard of review is *de novo*. *People v. Hall*, 198 Ill. 2d 173, 177 (2001).

¶ 19 Respondent raises this claim for the first time in this appeal. He did not object during the trial court proceedings, nor did he raise the issue in a posttrial motion. Normally, in such a case, the issue is considered forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an error for review, a defendant must object at trial and raise the error in a written posttrial motion). However, respondent contends we should review his argument under the plain-error rule.

¶ 20 The first thing a court must do under a plain-error analysis is determine whether an error actually occurred. *In re M.W.*, 232 Ill. 2d 408, 431 (2009). If an error is found, a court of review will grant relief in two situations:

"(1) if 'the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,' or (2) if the error is 'so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' [Citation.]" *M.W.*, 232 Ill. 2d at 431.

Thus, we must determine whether any error occurred at all, *i.e.*, whether the trial court erred by not conducting a hearing on the State's amended petition to revoke respondent's probation in case Nos. 09-JD-148 and 10-JD-12 separate from the adjudicatory hearing on the underlying offense in case No. 10-JD-238. We must decide whether the failure to hold a separate hearing violated respondent's

rights to due process.

¶ 21 There is no doubt that a minor is due certain procedural rights during delinquency proceedings in general, and in particular, during probation-revocation proceedings. *In re Sturdivant*, 44 Ill. App. 3d 410, 412 (1976). Our supreme court has held that a minor's probation may not be extended or revoked without notice and hearing and a finding that the minor has violated a condition of probation. *In re Sneed*, 72 Ill. 2d 326, 334 (1978). A probation-revocation hearing is a civil proceeding where the full protections of criminal due process do not apply. However, due process still requires a determination that the acts forming the basis for the revocation petition indeed occurred. Therefore, in a probation-revocation hearing, there must be an opportunity to be heard and to present evidence, and there is a right to confront and cross-examine witnesses. *People v. Lindsey*, 199 Ill. 2d 460, 473 (2002). In fact, our legislature has codified the requirements as follows. Section 5-720 of the Juvenile Court Act of 1987 (705 ILCS 405/5-720 (West 2010)) provides that upon the filing of a petition to revoke a minor's probation:

"(2) The court shall conduct a hearing of the alleged violation of probation or of conditional discharge. The minor shall not be held in detention longer than 15 days pending the determination of the alleged violation.

(3) At the hearing, the State shall have the burden of going forward with the evidence and proving the violation by a preponderance of the evidence. The evidence shall be presented in court with the right of confrontation, cross-examination, and representation by counsel.

\* \* \*

(6) Sentencing after revocation of probation or of conditional discharge shall be under Section 5-705 [(705 ILCS 405/5-705 (West 2010))]."

¶22 Other Illinois cases have approved similar proceedings where the trial court combined a trial with a probation-revocation hearing. See, e.g., *People v. Colon*, 225 Ill. 2d 125 (2007); *In re N.R.L.*, 200 Ill. App. 3d 820 (1990). In fact, our supreme court has encouraged a consolidated hearing, stating that it "is beneficial to the State and the defendant, because it avoids duplicative litigation, and thereby results in a more prompt, less costly disposition of all the proceedings against the defendant." *Colon*, 225 Ill. 2d at 154.

¶23 The standard of proof required at a trial on a petition for adjudication is the same as that in a criminal proceeding, that is, the offense must be proved beyond a reasonable doubt. See 705 ILCS 405/5-105(17) (West 2010). As set forth above, the standard of proof at a probation revocation hearing is lower. The State is required to prove the violation only by a preponderance of the evidence. See 705 ILCS 405/5-720(3) (West 2010). A proposition is proved by a preponderance of the evidence when that proposition is more probably true than not true. *People v. Love*, 404 Ill. App. 3d 784, 787 (2010). The same evidence may be sufficient to prove a violation of probation conditions, but insufficient to support an adjudication. *N.R.L.*, 200 Ill. App. 3d at 823. However, the opposite is not true. That is, if the evidence is sufficient to support an adjudication of delinquency, it is automatically sufficient to prove a violation of probation due simply to the lesser burden of proof.

¶24 Here, the trial court found the evidence was sufficient to prove respondent committed

the act of aggravated criminal sexual abuse, as alleged in the State's petition for adjudication in case No. 10-JD-238, beyond a reasonable doubt, which automatically meant the evidence was sufficient to prove he committed an act which violated his probation in case Nos. 09-JD-148 and 10-JD-12. (A condition of respondent's probation was that he was not to violate any criminal statute of any jurisdiction. See 705 ILCS 405/5-715(2)(a) (West 2010)). Respondent was present at trial and was represented by counsel, who examined and cross-examined witnesses on respondent's behalf. The record indicates respondent's cases were consolidated throughout the proceedings, as most of the transcripts filed on appeal reference all three cases. Respondent cannot claim surprise or a lack of notice with regard to the procedure or the presentation of evidence at the trial.

¶ 25 Although the trial court did not specifically answer two questions based on the evidence presented at the August 11, 2011, trial, neither the State nor defendant's counsel asked the court to answer the second question, *i.e.*, whether the State sufficiently proved respondent had violated the terms of his probation. Given the applicable lesser burden of proof, and the fact that all other due-process requirements had been met, the court was not necessarily required to make a specific finding on the State's amended petition to revoke in order to protect respondent's due-process rights. A guilty beyond-a-reasonable-doubt adjudication on the State's petition for adjudication necessarily implied respondent's commission of the underlying act by a preponderance of the evidence. In other words, to demonstrate that respondent violated a condition of his probation, the State had to show by a preponderance of the evidence that, while on probation, respondent committed aggravated criminal sexual abuse. The court found the State had done so, not only by a preponderance of the evidence, but beyond a reasonable doubt.

¶ 26 We find the Second District's opinion in *People v. Kruszyna*, 245 Ill. App. 3d 977

(1993), the case cited by respondent, distinguishable. In *Kruszyna*, the reviewing court reversed and remanded for a revocation hearing because the trial court summarily accepted the defendant's admission of a violation without inquiry or admonishments. *Kruszyna*, 245 Ill. App. 3d at 983. First, the revocation hearing was held separately, days later, from the trial at which the defendant was convicted of the underlying offense, and second, the defendant admitted the violation. When addressing the due-process requirements applicable to admissions, the Second District found the defendant's opportunity to be heard was lacking. *Kruszyna*, 245 Ill. App. 3d at 982. The court found that "not a single word of admonishment or inquiry was addressed to defendant" before the trial court accepted her admission. *Kruszyna*, 245 Ill. App. 3d at 983.

¶ 27 We conclude that because (1) respondent's three cases had proceeded simultaneously in pretrial proceedings, (2) he was provided notice of the charge, (3) he was represented by counsel at trial, and (4) he had the opportunity to cross-examine and present witnesses, he was afforded the requisite due process required of any probation-revocation hearing. The trial court's decision that the State sufficiently proved he committed the offense beyond a reasonable doubt likewise satisfied the State's burden of proving a violation of respondent's probation by a preponderance of the evidence. Thus, we find no due-process violation and no error.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the trial court's judgments.

¶ 30 Affirmed.