

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).

2013 IL App (4th) 120561-U

NO. 4-12-0561

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
August 9, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ANDRE WASHINGTON,	)	No. 09CF2069
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

---

JUSTICE TURNER delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the evidence indicated defendant failed to comply with his probationary conditions, the trial court's decision to revoke his probation was not against the manifest weight of the evidence.

¶ 2 In December 2009, defendant, Andre Washington, pleaded guilty to one count of domestic battery with a prior domestic battery conviction, and the trial court sentenced him to probation. In October 2011, the State filed a petition to revoke defendant's probation. In May 2012, the court revoked defendant's probation and later resentenced him to three years in prison.

¶ 3 On appeal, defendant argues the trial court erred in revoking his probation. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2009, the State charged defendant by information with one count of

domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2008)), alleging he knowingly caused bodily harm to Valinda Bender, a family or household member, in that he hit her in the eye and he had previously been convicted of domestic battery.

¶ 6 Later that month, defendant entered a negotiated plea of guilty in exchange for a sentence of 24 months' probation, the imposition of various fines and fees, the dismissal of several traffic charges, and the State's agreement not to file a petition to revoke probation in another case. The trial court found defendant's plea to be knowing and voluntary. The court accepted the plea and sentenced defendant to 24 months' probation. Along with the imposition of various fines and fees, the court ordered defendant to enroll in a partner-abuse intervention program or anger-management program within 60 days and complete the program without termination.

¶ 7 In October 2011, the State filed a petition to revoke defendant's probation, alleging he failed to pay the monthly probation-service fee and failed to enroll in and complete without termination either a partner-abuse intervention class or an anger-management class.

¶ 8 In January 2012, the trial court allowed defendant's motion to continue for 45 days as he had completed the intake process for the partner-abuse classes. In February 2012, the court granted defendant's motion for a second continuance on the ground that he was attending partner-abuse classes.

¶ 9 In May 2012, the trial court conducted a hearing on the petition to revoke probation. Ashley Doty, defendant's probation officer, testified he was ordered to enroll in partner-abuse classes or anger-management classes and complete one without termination. He was referred to a class in July 2010 but failed to complete the assessment necessary to enroll.

¶ 10 On cross-examination, Doty stated defendant told her he had not obtained an assessment because of his "financial situation." Doty stated a nominal fee was charged for the assessment and classes, even for indigents, and defendant did not have steady employment while on probation. In January 2012, defendant obtained the assessment and attended five classes before he was arrested. On redirect examination, Doty agreed that it was not that defendant was unable to pay but that he did not even get the assessment that led to the probation violation.

¶ 11 The trial court found the State had proved by a preponderance of the evidence that defendant willfully failed to comply with his probation condition that he enroll and complete the required program. The court revoked defendant's probation. In June 2012, the trial court resentenced defendant to three years in prison. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the trial court erred in revoking his probation for failing to enroll in partner-abuse or anger-management classes because the State's evidence did not prove he willfully failed to do so but instead indicated he lacked sufficient funds. We disagree.

¶ 14 "A probation revocation proceeding is in the nature of a civil proceeding arising in the wake of a previous conviction and sentence of probation, and the violation of previously imposed conditions of probation, not the commission of a culpable offense, must be proved." *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999). The State has the burden of proving the probation violation by a preponderance of the evidence. *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731; 730 ILCS 5/5-6-4(c) (West 2008).

¶ 15 On appeal, the trial court's decision on a petition to revoke probation will not be

overturned unless the court's findings are against the manifest weight of the evidence. *Williams*, 303 Ill. App. 3d at 267, 707 N.E.2d at 731. "A finding is against the manifest weight of the evidence only if a contrary result is clearly evident." *People v. Clark*, 313 Ill. App. 3d 957, 960, 731 N.E.2d 432, 435 (2000).

¶ 16 According to section 5-6-4(d) of the Unified Code of Corrections (730 ILCS 5/5-6-4(d) (West 2008)), a term of probation "shall not be revoked for failure to comply with conditions of a sentence or supervision, which imposes financial obligations upon the offender unless such failure is due to his willful refusal to pay." "Financial obligations" include the costs of an evaluation. *Clark*, 313 Ill. App. 3d at 962, 731 N.E.2d at 436. "Willful failure to pay means a voluntary, conscious and intentional failure." *People v. Davis*, 216 Ill. App. 3d 884, 888, 576 N.E.2d 510, 513 (1991). "Willfulness generally may be inferred from the actor's conduct and from other circumstances." *People v. Clark*, 268 Ill. App. 3d 810, 814, 645 N.E.2d 590, 593 (1995).

¶ 17 In the case *sub judice*, the trial court sentenced defendant to probation on December 20, 2009. From December 30, 2009, to April 14, 2010, defendant was in prison on a parole violation. In July 2010, Doty referred defendant for his assessment. On November 17, 2010, defendant was arrested for aggravated battery and driving under a revoked license. He was sentenced to 300 days in jail on January 18, 2011 (with credit for 30 days served) for driving on a revoked license and 160 days in jail on March 11, 2011 (with credit for 106 days served) for aggravated battery.

¶ 18 Defendant told Doty that his "financial situation" precluded him from obtaining the assessment during the four-month period when he was not incarcerated from July 2010 to

November 2010. However, he managed to find the money to pay the nominal fee for the assessment after the State filed its petition to revoke probation. Doty was not aware of any change in defendant's financial situation that would explain his ability to pay for the assessment and classes.

¶ 19 The evidence in this case indicates defendant spent more time committing crimes than attempting to comply with his terms of probation. In his December 2011 affidavit in support of his request for appointed counsel, defendant indicated he lived with a friend and did not pay child support. He was unemployed but had last worked at Hardee's in October 2011. He also indicated he was physically and mentally able to work. Defendant demonstrated he did not consider the probation obligation to be a priority as it was only after he was arrested and the State sought to revoke his probation that he took steps to comply with his probation. The trial court's decision in revoking defendant's probation was not against the manifest weight of the evidence.

¶ 20

### III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 22 Affirmed.