

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) 120649-U

NO. 4-12-0649

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
January 28, 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.	)	McLean County
GRADY WEEKS,	)	No. 04CF255
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

---

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court lacked jurisdiction to revoke defendant's probation, the judgment revoking his probation and sentencing him to prison must be vacated.

¶ 2 In May 2004, defendant, Grady Weeks, pleaded guilty to violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 to 12 (West 2004)). In September 2004, the trial court placed him on 24 months' probation. Over the years, the State filed six petitions to revoke defendant's probation. In October 2011, defendant admitted the allegations in the fifth and sixth petitions. In December 2011, the court revoked defendant's probation and resentenced him to three years in prison.

¶ 3 On appeal, defendant argues the revocation of his probation and his subsequent sentence are void. We vacate the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In March 2004, the State charged defendant by information with one count of violation of the Act, alleging he knowingly failed to register and report a change of address as required (730 ILCS 150/6 (West 2004)). In May 2004, defendant pleaded guilty. In September 2004, the trial court sentenced him to 180 days in jail, ordered him to pay a \$500 fine, and placed him on probation for 24 months.

¶ 6 In October 2005, the State filed its first petition for revocation of probation, alleging defendant failed to report to his probation officer. In April 2006, the State filed a second petition to revoke probation, alleging defendant failed to (1) pay fines, fees, and costs, (2) report to his probation officer, and (3) complete sex-offender treatment. In December 2006, the State struck the first petition, and the trial court accepted defendant's admission to the allegations in the second petition. On February 9, 2007, the court ordered defendant to serve 30 months' probation and jail time.

¶ 7 On August 6, 2009, the State filed a third petition to revoke probation. A notice to appear was issued on August 11, 2009. Defendant was arraigned on that petition and personally served with a copy on September 18, 2009. On October 9, 2009, defendant admitted one of the allegations in the State's petition, and the trial court ordered him to serve 18 months of probation and pay outstanding fines and fees.

¶ 8 On December 17, 2009, the State filed a fourth petition to revoke probation. On March 2, 2010, defendant admitted the allegation in the fourth petition, and the trial court modified the probation term to include community service.

¶ 9 On April 8, 2011, the State filed a fifth petition to revoke probation. The notice to appear was issued on April 13, 2011. The State's sixth petition to revoke probation was filed on

May 4, 2011, and the notice to appear was issued on May 6, 2011. The allegations in the fifth petition formed the basis for a new felony charge in case No. 11-CF-322.

¶ 10 On October 21, 2011, defendant admitted the allegations in the fifth and sixth petitions to revoke probation. In December 2011, the trial court revoked defendant's probation and resentenced him to three years in prison, to be served in conjunction with a concurrent three-year term in case No. 11-CF-322. This court granted defendant's late notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues the revocation of his probation and the subsequent sentence are void because the third and fifth petitions to revoke probation did not have a timely issuance of the notice to appear and the term was not tolled by the filing of a petition to revoke probation. We agree, and the State concedes the error.

¶ 13 "Illinois courts have consistently held that the circuit court's jurisdiction over a probationer is coexistent with the duration of his sentence of probation and that once that term expires, the court has no authority to revoke or modify his probation." *People v. Thoman*, 381 Ill. App. 3d 268, 274, 886 N.E.2d 518, 523 (2008).

"Personal service of the petition for violation of probation or the issuance of such warrant, summons or notice shall toll the period of probation, conditional discharge, supervision, or sentence of county impact incarceration until the final determination of the charge, and the term of probation, conditional discharge, supervision, or sentence of county impact incarceration shall not run until the hearing and disposition of the petition for violation." 730 ILCS

5/5-6-4(a) (West 2004).

"The tolling provisions were enacted to ensure that the court's jurisdiction is retained and that the term of probation does not expire prior to a hearing on a petition to revoke." *Thoman*, 381 Ill. App. 3d at 274, 886 N.E.2d at 523. "Absent such a tolling, the court, however, has no authority to revoke a defendant's probation after the period of probation has expired." *People v. Bedell*, 253 Ill. App. 3d 322, 336, 624 N.E.2d 1308, 1318 (1993).

¶ 14 In the case *sub judice*, defendant's probation term expired on August 9, 2009, and it was not properly tolled when the State filed the third petition to revoke probation (August 6, 2009) but did not personally serve him with the petition or have the trial court issue a warrant, summons, or notice to appear prior to the expiration of the probationary period. The October 9, 2009, judgment was therefore void, as was every judgment thereafter.

¶ 15 Even if we ignore the void judgment of October 2009, the State repeated the error with the fifth petition to revoke probation. Defendant's probationary term was set to expire on April 8, 2011. The State filed the fifth petition to revoke probation on April 8, 2011, but the notice to appear did not issue until April 13, 2011. As the State here failed to file the petition to revoke probation *and* obtain personal service or cause a warrant, summons, or notice to issue within the proper time, the probationary period was not tolled. As the trial court was without jurisdiction to revoke defendant's probation in December 2011, the court's three-year sentence must be vacated.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we vacate the trial court's judgment.

¶ 18 Vacated.