

of probation. When so sentencing the defendant, the trial judge stated that because of the defendant's extensive criminal history, spanning several states and 35 years of criminality, and because the plea agreement involved the dismissal of an entirely unrelated, but more serious, criminal case against the defendant, the trial judge did not like the probation sentence "at all," but would nevertheless concur with the plea presented to him and would sentence the defendant accordingly. One of the conditions of the defendant's probation was that he not commit any new criminal offenses.

¶ 5 On May 18, 2011, the State filed a petition to revoke the defendant's probation, alleging that on May 14, 2011, the defendant committed the criminal offense of theft when he was found in possession of stolen property. A hearing on the petition was held on August 30, 2011, at which Illinois State Police Trooper Daniel Money testified as the only witness for the State. Money testified that on May 9, 2011, he was dispatched to a residence in Hardin County to investigate a burglary. Physical evidence gathered at the scene tied the defendant's brother, Doug "Hook" Tipton, to the burglary. A tip from an informant led Money and other officers to the home of the defendant on May 14, 2011, where numerous items were recovered that matched the detailed list provided to Money by the owners of the burglarized home, including items of jewelry, a distinctive silver communion cup, a distinctive entertainment center drawer, tools, guns, a computer, a swimming pool pump, and a Yamaha four-wheeler. Also found were the victims' passports, personal and business checks, credit cards, and prescription drugs. The items were found, some in plain view of the defendant, after the defendant consented in writing to a search of his home. Money testified that the defendant told him that he had just moved into the home, that the items were there when he moved in, and that they did not belong to the defendant. A DVD of the recovered items, made by Money on May 15, 2011, was admitted into evidence.

¶ 6 For the defense, the defendant's sister and brother-in-law testified that they helped the

defendant move into the home on May 7, 2011, and that at no time did either of them see any of the items that were later determined to belong to the victims of the burglary. The defendant testified that when he moved into the home it was empty, but that while at his sister's home, his brothers Doug and Roy gave him a water pump with "a big weird filter on it," which he placed in his car. He testified that several days later, Doug and three other men brought the four-wheeler to his new home and offered to sell it to him. They told him the title to the four-wheeler had been lost in a flood in Shawneetown. He purchased the four-wheeler from them, but did not know it was stolen. The defendant testified that the remaining stolen property arrived at his home on the day he was arrested, May 14, 2011, and was brought there by his brother Doug. The defendant testified that he allowed Doug to move in with him because Doug was dying, and that Doug passed away between the time of the defendant's arrest and the August 30, 2011, hearing. He also testified that Doug had a drinking problem, was eccentric, and tended to collect all kinds of strange objects. He testified that he believed Doug took the items from their sister (who, we note, was not the victim of the burglary), something Doug often did when drunk, and that Doug would eventually return the items, as Doug usually did once sober again. On cross-examination, the defendant denied knowing that the items were stolen from the burglary victims, choosing instead to refer to them as "pilfered," allegedly from his sister.

¶ 7 At the conclusion of the hearing, the trial judge took the matter under advisement. Subsequently, he entered an order that revoked the defendant's probation and set the matter for sentencing. Subsequent to the sentencing, this timely appeal followed.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant raises only one issue: whether the State proved, by a preponderance of the evidence, that the defendant knowingly possessed stolen property. The defendant does not appeal his sentence, nor any other aspect of the case, and accordingly has

forfeited, for purposes of appeal, all challenges other than the one listed above. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). We begin with some general statements of law relevant to the issue raised by the defendant on appeal. A probation revocation proceeding is civil in nature, rather than criminal. *People v. Woznick*, 278 Ill. App. 3d 826, 828 (1996). Accordingly, proof that the defendant violated one of the conditions of probation need only be by a preponderance of the evidence, and we will not disturb a trial judge's decision to revoke probation unless that decision is against the manifest weight of the evidence. *Id.*

¶ 10 In the case before us, the State alleged that the defendant's probation should be revoked because the defendant violated one of the terms of that probation by committing the criminal offense of theft by possession of stolen property. The State presented ample evidence in support of the petition, and we do not conclude that the trial judge's decision to revoke the defendant's probation was against the manifest weight of the evidence. Trooper Money testified that numerous stolen items were found in and around the defendant's home, and that some of the items were in the plain view of the defendant at the time Money arrived at the home. Money also testified that the defendant told him that he had just moved into the home, that the items were there when he moved in, and that they did not belong to the defendant. The defendant conceded that he knew some of the items were in his home, but contended that he thought his brother Doug had "pilfered" the items from their sister when drunk and would return them to her when sober. The defendant was certainly permitted to present this theory, but the trial judge was under no obligation to believe it, especially when it conflicted with the testimony of Money as to the explanation the defendant had given Money for the presence of the items.

¶ 11 Although the defendant contends that there was no evidence that the defendant "ever obtained control over any of the stolen property except the four-wheeler," we agree with the State that given the fact that the stolen property was strewn about his property, including in his plain view, a reasonable and creditable inference for the trial judge to draw was that the defendant had control over the property and knew that it was stolen. See, e.g., *People v. Brown*, 277 Ill. App. 3d 989, 997-98 (1996) (defendant's control over premises where illicit materials found gives rise to inference of knowledge and control of materials). Moreover, the fact that the defendant felt the need to change his story from what he originally told Money to what ultimately he testified to at the hearing, could reasonably lead the trial judge to believe that the defendant was being less than truthful, and in fact knew that the items were stolen property.

¶ 12

CONCLUSION

¶ 13 In short, the State presented sufficient evidence to prove, by a preponderance of the evidence, that the defendant violated the conditions of his probation by committing the criminal offense of theft by possession of stolen property. Accordingly, we affirm the order of the circuit court of Hardin County that revoked the defendant's probation.

¶ 14 Affirmed.