

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).

2014 IL App (4th) 121138-U
NOS. 4-12-1138, 4-12-1139 cons.
IN THE APPELLATE COURT

FILED
July 15, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
STEPHANIE SEIDELMAN,)	Nos. 12CF280
Defendant-Appellant.)	12CF281
)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) vacated the trial court's judgment dismissing defendant's motions to reconsider sentence on the merits and ordered the motions be dismissed for lack of jurisdiction and (2) reversed the trial court's revocation of defendant's probation and remanded with directions.

¶ 2 On June 8, 2012, defendant pleaded guilty to one count of theft (720 ILCS 5/16-1(a)(1), (b)(2) (West 2012)) and one count of retail theft (720 ILCS 5/16-25(a)(1), (f)(2) (West 2012)) pursuant to a fully negotiated plea agreement and was sentenced to 2 1/2 years' drug-court probation. In July 2012, the State filed petitions to revoke probation in both cases. On August 3, 2012, defendant admitted violating the conditions of her probation. On September 21, 2012, the trial court resentenced her to two concurrent five-year prison terms.

¶ 3 On November 21, 2012, defendant filed motions to extend the deadline to file motions to reconsider sentence in both cases. On December 5, 2012, she filed motions to

reconsider sentence in both cases. Following a December 14, 2012, hearing, the trial court denied the motions to reconsider sentence.

¶ 4 On appeal, defendant asserts (1) the trial court failed to substantially comply with Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) during the probation-revocation hearing, requiring remand; and (2) the fines assessed by the circuit clerk are void and must be vacated.

¶ 5 Because the motions to reconsider sentence were filed more than 30 days after the trial court resentenced defendant, we find the trial court lacked jurisdiction to consider the motions. For that reason, we vacate the trial court's judgment and order the motions to reconsider sentence be dismissed for lack of jurisdiction. Having otherwise been vested with jurisdiction to consider the merits of defendant's appeal upon allowing her late notice of appeal, we reverse the trial court's revocation of defendant's probation given that it failed to substantially comply with Rule 402A(a), and we remand with directions to allow defendant to withdraw her admissions to the petition to revoke and for the court to hold further proceedings consistent with this order.

¶ 6 I. BACKGROUND

¶ 7 In May 2012, the State charged defendant by information with two counts of theft (720 ILCS 5/16-1(a)(1), (a)(2), (f)(1) (West 2012)) in Sangamon County case No. 12-CF-280. The State also charged defendant with one count of retail theft (720 ILCS 5/16-25(a)(1), (f)(2) (West 2012)) in Sangamon County case No. 12-CF-281. All of the charges were Class 4 felonies due to defendant's prior convictions.

¶ 8 On June 8, 2012, defendant pleaded guilty to one of the theft counts and the retail theft count pursuant to a fully negotiated plea agreement. Due to defendant's prior criminal

history, she was extended-term eligible for both charges. Under the terms of the agreement, defendant was sentenced to 2 1/2 years' drug-court probation, with conditions including that she serve 180 days in the Sangamon County jail (which was stayed pending review hearings) and pay \$100 restitution. The second count of theft, in Sangamon County case No. 12-CF-280, was dismissed. Prior to accepting defendant's plea, the trial court admonished defendant and found she understood (1) the nature of the charges; (2) the range of possible sentences; (3) the rights she was giving up by pleading guilty, including the right to have a trial where (a) the State would have to prove her guilty beyond a reasonable doubt and (b) she could cross-examine witnesses and present her own evidence; and (4) that she knowingly and voluntarily pleaded guilty. The court further found a factual basis for the plea.

¶ 9 In July 2012, the State filed petitions to revoke defendant's probation in both cases, alleging defendant failed to satisfy the following conditions of probation as ordered: (1) immediately report to the probation department; (2) keep the probation department notified of her current address; (3) attend all court dates; (4) report to court services; (5) refrain from the use or possession of alcohol and illegal drugs; (6) undergo a substance-abuse assessment; and (7) participate in alcohol and drug treatment.

¶ 10 At a court appearance on August 3, 2012, defendant's counsel advised the court, "We would waive a hearing in this matter. She does understand that she has a right to a hearing. She would forego a formal hearing of her [petition to revoke]. We would like to have a [presentence investigation report] ordered, and we would ask to have this matter set for sentencing." The trial court then confirmed with defendant she wished to admit violating all but the first condition, *i.e.*, immediately reporting to the probation department. The trial court found defendant in violation of the conditions of her probation and scheduled a resentencing hearing. It

does not appear defendant was arraigned on the petitions to revoke probation or admonished of her rights pursuant to Rule 402A(a) prior to her admission.

¶ 11 At the September 21, 2012, resentencing hearing, the trial court resentedenced defendant to two concurrent five-year prison sentences, with credit for 135 days served. The court then admonished defendant as follows:

"You have a right to appeal. Prior to taking an appeal, you must first file within 30 days of today a written motion asking to have the judgment vacated and for leave to withdraw the guilty plea setting forth the grounds for the motion. If the motion is allowed, the sentence will be modified—or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made.

Upon request of the State, any charges that were dismissed as part of the plea agreement would be reinstated and also set for trial if you appeal. If the Motion to Reconsider Sentence or Vacate Judgment is denied and you still desire to appeal, you must file your Notice of Appeal within 30 days of the date that motion was denied."

¶ 12 On November 21, 2012, defendant filed motions to extend the deadline for filing motions to reconsider sentence in both cases. The motions alleged "a few weeks" after defendant was sentenced to prison, she "had not yet been shipped to the Department of Corrections," when she contacted an assistant public defender who had represented her in a previous case (not the theft cases at issue here), stating "she wanted to appeal, thus, she wanted to file a Motion to

Reconsider her sentence." Defendant asserted that when the public defender went to speak with her at the Sangamon County jail, defendant had been "shipped to the Department of Corrections," where "[i]nmates *** stay in 'receiving' for at least 30 days and access to them is at best limited."

¶ 13 On December 5, 2012, defendant filed motions to reconsider sentence in both cases, asserting her sentences were excessive. It does not appear the trial court ever ruled on defendant's motions to extend the deadline to file the motions to reconsider. Following a December 14, 2012, hearing on the matter, the trial court denied the motions to reconsider sentence. Defendant immediately filed a notice of appeal from the denial of the motions to reconsider sentence.

¶ 14 On February 22, 2013, defendant filed a motion for leave to file a late notice of appeal, which this court allowed. On March 4, 2013, defendant filed a late notice of appeal in which she listed the nature of the order appealed as "Revocation of Probation, Imposition of Sentence, and Denial of Motion to Reconsider Sentence."

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant asserts (1) the trial court failed to substantially comply with Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) during the probation-revocation hearing, requiring remand and (2) the fines assessed by the circuit clerk are void and must be vacated.

¶ 17 At the outset, the State contends this court lacks jurisdiction to consider defendant's appeal from the denial of her motions to reconsider sentence because both of these motions and the preceding motions for extension of time to file the motions to reconsider

sentence were filed more than 30 days after her sentence was imposed. Before addressing the merits of this appeal, we must first ascertain our jurisdiction.

¶ 18

A. Jurisdiction

¶ 19

A trial court is generally divested of jurisdiction 30 days after the entry of a final judgment unless a postjudgment motion is filed within that time. *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474. In this case, defendant was resentenced to two concurrent five-year prison terms on September 21, 2012. Thus, she had until Monday, October 22, 2012, to file a postjudgment motion or notice of appeal in the trial court. See 5 ILCS 70/1.11 (West 2012) (when the last day of a time period falls on a Saturday or Sunday, it is not included in the computation). Here, defendant filed her motions to reconsider sentence on December 5, 2012, obviously beyond the allowable 30-day time frame. Defendant also filed motions to extend the deadline to file her motions to reconsider sentence. See *People v. Church*, 334 Ill. App. 3d 607, 614, 778 N.E.2d 251, 256 (2002) ("A trial court has the inherent authority, upon proper application and showing of good cause, to grant an extension of time for filing a motion to reconsider sentence or a motion to withdraw guilty plea."). However, the motions to extend the deadline were not filed until November 21, 2012, also beyond the 30-day deadline. Thus, the trial court was divested of jurisdiction by the time the extension motions were filed.

¶ 20

In her reply brief, defendant concedes neither the motions to extend the filing deadline nor the motions to reconsider sentence were filed within the required 30-day time frame. However, she asserts "[t]rial counsel's motions for extension of time and the acquiescence of the trial court and prosecutor to the reconvening after more than 30 days had elapsed demonstrate that the failure to file a timely notice of appeal lies at the feet of trial counsel and not [defendant], herself." Further, she contends the court's admonitions regarding

how to perfect an appeal "were confusing at best." Specifically, she argues the court erred by informing her she was required to file a motion to withdraw her guilty plea before she could appeal.

¶ 21 In admonishing defendant following resentencing, the trial court stated, "[p]rior to taking an appeal, you must first file within 30 days of today a written motion asking to have the judgment vacated and for leave to withdraw the guilty plea setting forth the grounds for the motion." Defendant is correct the trial court mistakenly informed her that following resentencing in a probation-revocation proceeding, she needed to file a motion to reconsider sentence before she could appeal. See *People v. Bonds*, 317 Ill. App. 3d 411, 415-16, 740 N.E.2d 519, 522-23 (2000) ("Although the trial court incorrectly informed defendant that he *needed* to file a motion to reconsider sentence before he could appeal [from a resentencing hearing following probation revocation], the law does not prohibit a defendant from *choosing* to file such a motion" if the defendant believes the court erred in sentencing him. (Emphases in original.)). However, defendant did not file a postsentencing motion, nor did she seek to appeal within 30 days of her resentencing. Instead, she filed motions to reconsider sentence long after the 30-day time period to do so had lapsed. In fact, her motions to extend the deadline to file her motions to reconsider sentence were filed 61 days after her resentencing hearing. Defendant presents no argument explaining how the trial court's admonition resulted in her delay in filing.

¶ 22 Because defendant did not file a postjudgment motion in the trial court within 30 days of resentencing as required, the trial court was without jurisdiction to consider her untimely motions. Thus, we vacate the trial court's judgment dismissing defendant's motions to reconsider sentence on the merits and order the motions be dismissed for lack of jurisdiction. See *Bailey*, 2014 IL 115459, ¶¶ 28-29, 4 N.E.3d 474 (holding while an appellate court is without authority to

address the merits of a judgment entered by a trial court that lacked jurisdiction, the appellate court "should *** vacate[] the trial court's judgment and order[] that defendant's motion be dismissed" because simply dismissing the appeal for lack of jurisdiction "effectively leaves the lower court's [void] ruling on the merits [of the defendant's motion] undisturbed and intact").

¶ 23 This does not end our jurisdictional analysis. Defendant asserts this court can still consider the merits of her appeal given that we granted her late notice of appeal and she "has not appealed from the denial of the motions to reconsider," but "[i]nstead, she is challenging the probation revocation admonishments *** [and] void fines." We agree. This court granted defendant's motion for leave to file a late notice of appeal, which vests us with jurisdiction to consider the merits of her appeal.

¶ 24 B. Rule 402A(a) Admonishments

¶ 25 Whether the trial court substantially complied with Illinois Supreme Court Rule 402A(a) (eff. Nov. 1, 2003) admonishments is a question of law we review *de novo*. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007). As pronounced by our supreme court in *People v. Hall*, 198 Ill. 2d 173, 181, 760 N.E.2d 971, 975 (2001), and later codified in Rule 402A(a), a trial court must ensure a defendant seeking to admit a petition to revoke probation, conditional discharge, or supervision, understands the following:

"(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision." Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003).

¶ 26 Rule 402A(a) requires the trial court to substantially comply with its admonitions requirements. Ill. S. Ct. R. 402A(a) (eff. Nov. 1, 2003). This court has stated " '[s]ubstantial compliance' means that although the trial court did not recite to the defendant, and ask the defendant if he or she understood, an item listed in [the] Rule ***, the record nevertheless affirmatively and specifically shows that the defendant in fact understood that item." *People v. Dennis*, 354 Ill. App. 3d 491, 495, 820 N.E.2d 1190, 1193 (2004).

¶ 27 The State initially asserts defendant waived Rule 402A(a) admonishments when she signed the drug-court-conditions addendum (as part of her drug-court probation) that indicated she understood the "failure to fully participate in an individualized treatment plan, failure to appear, positive urine tests and other program failures will result in immediate sanctions being imposed, including, but not limited to incarceration" and "[a]ny sanction may be imposed immediately, without notice and without benefit of legal counsel." We disagree. The drug-court addendum signed by defendant would have applied only to the imposition of sanctions during her drug-court probation. It has no application in any subsequent probation-revocation proceedings.

¶ 28 "The goal [of Rule 402A(a) admonishments] is to ensure that defendant understood [her] admission, the rights [she] was waiving, and the potential consequences of [her] admission." *Id.* at 496, 820 N.E.2d at 1194. While literal compliance with Rule 402A(a) is preferable, we may consider the entire record, including the record of earlier proceedings, to decide whether a defendant understood the items listed in Rule 402A(a) or in *Hall*. *Id.* "Although the best practice is to give the admonition at the time of accepting the waiver, the failure to do so is not necessarily fatal. Each case must be determined on its own peculiar circumstances, with the principal focus upon the length of time between the waiver *** and the plea." *Id.* (quoting *People v. Ray*, 130 Ill. App. 3d 362, 365, 471 N.E.2d 933, 936 (1984)). The relevant inquiry then is whether "realistically, an ordinary person in defendant's position would have understood, from the earlier proceedings, that by admitting *** the *** petition to revoke [her] probation," she was giving up her rights enumerated in Rule 402A(a). *Id.*

¶ 29 In this case, defendant was admonished pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997) when she pleaded guilty on June 8, 2012. While Rule 402 applies to

guilty pleas and not probation-revocation proceedings, its admonishments are similar to those in Rule 402A(a).

¶ 30 On August 3, 2012, defendant admitted violating the terms of her probation. The trial court did not admonish defendant pursuant to Rule 402A(a) prior to her admission. We recognize defendant's trial counsel informed the court defendant understood she had a right to a hearing and "would waive a hearing in this matter." However, the record does not reflect defendant understood the rights she was giving up by waiving a hearing. Specifically, the record does not demonstrate that, at the time defendant admitted violating the terms of her probation, she understood (1) she had the right to a hearing with defense counsel present; (2) she had the right to confront and cross-examine adverse witnesses and present her own evidence at the hearing; (3) at the hearing, the State must prove the violations by a preponderance of the evidence; (4) by admitting violating the conditions of probation, she was waiving the right to a hearing, during which she could cross-examine adverse witnesses and present her own evidence; and (5) the possible sentences for the underlying offenses. Ill. S. Ct. R. 402A(a)(2) to (a)(6) (eff. Nov. 1, 2003).

¶ 31 The State argues the trial court's admonishments pursuant to Rule 402 on June 8, 2012, when defendant pleaded guilty to the original theft charges, were sufficiently close in time to the probation-revocation proceeding so as to excuse compliance with Rule 402A at the time of defendant's admission in the probation-revocation proceedings. It cites *Dennis* and *In re Westley A.F.*, 399 Ill. App. 3d 791, 928 N.E.2d 150 (2010), in support of its assertion. Based on our review of these cases, we disagree.

¶ 32 In *People v. Dennis*, the defendant argued his due-process rights were violated when the trial court failed to properly admonish him at a hearing on a petition to revoke

probation as required by *Hall. Dennis*, 354 Ill. App. 3d at 492, 820 N.E.2d at 1191. Prior to the proceeding at issue in *Dennis*, the State filed two petitions to revoke the defendant's probation, in October 2000 and May 2001. *Id.* at 493, 820 N.E.2d at 1191. On both occasions, the defendant admitted violating the conditions of his probation after being admonished of his constitutional rights, including his right to be represented by counsel and to cross-examine witnesses. *Id.* On June 13, 2003, the defendant appeared in court for arraignment on a third petition to revoke probation, at which time he was again admonished as to his rights to be represented by counsel and to cross-examine witnesses. *Id.* On July 15, 2003, the defendant admitted violating his probation for the third time. *Id.* at 493-94, 820 N.E.2d at 1191-92. However, at the July 15, 2003, hearing, the trial court did not admonish the defendant of his right to be represented by counsel and his right to cross-examine witnesses. *Id.* at 495, 820 N.E.2d at 1193. The defendant argued this omission resulted in a denial of his due-process rights. *Id.* at 492, 820 N.E.2d at 1191. In finding substantial compliance with *Hall*, this court noted, "[t]he trial court admonished [the defendant] over and over again on those rights, most recently a month before the admission at issue in this case. Considering the repetition and recency of the admonitions, we find substantial compliance with *Hall*." *Id.* at 496, 820 N.E.2d at 1194.

¶ 33 Similarly, in *Westley A.F.*, the issue was whether the respondent was denied due process where the trial court failed to advise him of the possible sentencing range immediately prior to accepting his admission to violating probation. *Westley A.F.*, 399 Ill. App. 3d at 795, 928 N.E.2d at 154. In that case, at a June 2007 hearing on the State's petition to adjudicate respondent delinquent, the court admonished respondent regarding the possible sentencing range prior to accepting his guilty plea and sentencing him to probation. *Id.* at 792, 928 N.E.2d at 152. On April 22, 2008, the State filed a petition to revoke the respondent's probation. On April 28,

2008, the court admonished the respondent regarding the possible penalties that could be imposed. *Id.* at 793, 928 N.E.2d 152-53. On May 19, 2008, the respondent admitted violating his probation and the court accepted his admission without again admonishing him regarding the possible sentencing range. *Id.* at 793, 928 N.E.2d at 153. The respondent argued the trial court's failure to admonish him about the possible sentencing range resulted in a denial of his due-process rights. *Id.* at 795, 928 N.E.2d at 154. The appellate court disagreed and held, "given the short period of time between when respondent was admonished and when he admitted to violating his probation, and the fact that respondent was similarly admonished when he pleaded guilty, we determine that an ordinary person in respondent's position would have understood the sentencing range he faced." *Id.* at 797, 928 N.E.2d at 156.

¶ 34 The present case is distinguishable from *Dennis* and *Westley A.F.* First, the defendant in this case was *never* admonished pursuant to *Hall* or Rule 402A(a), as compared with *Dennis* and *Westley A.F.* Second, while defendant here was admonished prior to her guilty pleas, the admonishment was pursuant to Rule 402. As noted, while the admonishments in Rules 402 and 402A(a) are similar, they are not identical. For example, Rule 402A(a)(4) advises the defendant the State must prove the alleged probation violation by a preponderance of the evidence. No comparable admonition exists within Rule 402. Third, the defendant in *Dennis* and the respondent in *Westley A.F.* had been properly admonished multiple times prior to admitting violating their probation, most recently 32 and 21 days respectively. In this case, 56 days elapsed from the time defendant pleaded guilty (when she was admonished pursuant to Rule 402) until the time she admitted violating her probation. Defendant does not cite, nor do we find, any authority which would support a finding of substantial compliance with rule Rule 402A under similar circumstances. Nor can we realistically say that an ordinary person in defendant's

position would have understood from the June 2012 guilty-plea proceeding that by admitting the petition to revoke probation, she was giving up her rights enumerated in Rule 402A(a). *Dennis*, 354 Ill. App. 3d at 496, 820 N.E.2d at 1194.

¶ 35 Because the trial court failed to substantially comply with Rule 402A(a), we reverse its revocation of defendant's probation and remand with directions to allow defendant to withdraw her admissions to the petitions to revoke and for further proceedings consistent with this order.

¶ 36 C. Propriety of Fines

¶ 37 Because we reverse the trial court's revocation of defendant's probation and resulting sentence, we need not determine the propriety of the fines imposed.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we vacate the trial court's judgment on the merits as to the motions to reconsider sentence; reverse the trial court's revocation of defendant's probation; and remand with directions to dismiss the motions to reconsider sentence for lack of jurisdiction, and allow defendant to withdraw her admissions to the petitions to revoke and for further proceedings consistent with this order.

¶ 40 Vacated in part; reversed and remanded with directions.