

NOTICE
Decision filed 01/02/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130071-U

NO. 5-13-0071

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Montgomery County.
)	
v.)	Nos. 08-CF-191, 11-CF-51,
)	11-CF-58, & 11-CF-80
WILLIAM P. CALLADINE,)	
)	Honorable Kelly D. Long,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The order denying the defendant's motion for revocation of fines is affirmed where the defendant failed to show good cause for revocation.

¶ 2 For various felony offenses, the defendant was sentenced to imprisonment and ordered to pay fines. While serving the prison sentences, the defendant filed in the circuit court a motion to revoke the fines. The circuit court denied the defendant's motion, commenting that "any good cause to revoke any fine cannot be determined until defendant is out of the Department of Corrections." The circuit court was correct, and its judgment is affirmed.

¶ 3

BACKGROUND

¶ 4 In April 2009, the State and the defendant appeared before the circuit court in Montgomery County case No. 08-CF-191. Pursuant to an agreement between the parties, the defendant pleaded guilty to unlawful possession of methamphetamine precursors (720 ILCS 646/20(a)(1) (West 2008)), a Class 2 felony, and the court imposed a sentence of probation for a four-year period. In addition to the standard conditions of probation, such as not violating any criminal or traffic law, various monetary obligations were imposed, including the payment of a \$650 fine and a \$1,000 mandatory drug assessment. In April, 2011, the State filed a petition to revoke the defendant's probation, alleging that the defendant had committed three new traffic offenses.

¶ 5 On May 2, 2011, pursuant to an agreement between the parties, the defendant admitted the allegation in the petition to revoke probation in No. 08-CF-191, and the court revoked the probation and sentenced the defendant to imprisonment for four years and nine months. All of the monetary obligations from the original probation order, except unaccrued probation fees, were reinstated.

¶ 6 Also on May 2, 2011, and also pursuant to the parties' agreement, the defendant pleaded guilty to four Class 4 felony counts in three new cases. Specifically, he pleaded guilty to driving while license revoked (625 ILCS 5/6-303(d-3) (West 2010)) in case No. 11-CF-51; driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(d)(1)(G) (West 2010)) and driving while license revoked (625 ILCS 5/6-303(d-3) (West 2010)) in case No. 11-CF-58; and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) in case No. 11-CF-80. Adopting the parties' agreement, the

court sentenced the defendant to four years and nine months of imprisonment for each of these four new felony counts, with the sentences concurrent with one another and with the sentence in No. 08-CF-191. Monetary obligations were part of the sentence(s) in each of the three new cases. In No. 11-CF-51, the only monetary obligation was the payment of court costs. In No. 11-CF-58, the monetary obligations included a mandatory \$1,000 fine for the DUI count. See 625 ILCS 5/11-501.01(f) (West 2010) (mandatory \$1,000 fine for DUI where defendant has prior DUI conviction). In No. 11-CF-80, the monetary obligations included a mandatory \$500 assessment. See 720 ILCS 570/411.2(a)(4) (West 2010) (mandatory \$500 assessment for a Class 3 or Class 4 felony violation of Illinois Controlled Substances Act).

¶ 7 The defendant did not seek to withdraw his pleas of guilty in Nos. 11-CF-51, 11-CF-58, and 11-CF-80, or his admission to violating probation in No. 08-CF-191. He did not pursue an appeal from any of the judgments entered on May 2, 2011.

¶ 8 Then, on January 16, 2013, the defendant filed *pro se* a motion to revoke his fines pursuant to section 5-9-2 of the Unified Code of Corrections (730 ILCS 5/5-9-2 (West 2012)). All four of the above-discussed cases were listed in the motion's caption. The defendant averred that he remained imprisoned in the Department of Corrections, earned only \$10 per month, had essentially no assets, and was therefore unable to pay his fines. He further averred that after his release from prison, he would remain unable to pay his fines because he would need to find a job, pay for food and transportation, and help support his two minor children. He asked the court to vacate all fines and other monetary obligations in his cases.

¶ 9 Also on January 16, 2013, the circuit court entered, in No. 11-CF-80, a docket-entry order stating, "Motion for revocation of fine denied."

¶ 10 On February 6, 2013, the defendant filed a notice of appeal from the denial order, thus perfecting the instant appeal.

¶ 11 On February 13, 2013, the court entered a written order denying the motion to revoke fines. The court wrote, *inter alia*, that "[u]nder 730 ILCS 5/5-9-2 a Court may revoke a fine for good cause shown," and "[w]hether there is any good cause to revoke any fine cannot be determined until defendant is out of the Department of Corrections."

¶ 12 ANALYSIS

¶ 13 This appeal is from the circuit court's order denying the defendant's motion for revocation of fines pursuant to section 5-9-2 of the Unified Code of Corrections. A petition under section 5-9-2 is a freestanding action collateral to the original action; the circuit court had jurisdiction on that basis, and therefore this court has jurisdiction. See *People v. Mingo*, 403 Ill. App. 3d 968, 971-72 (2010). Under section 5-9-2, a circuit court, "upon good cause shown, may revoke the fine or the unpaid portion or may modify the method of payment." 730 ILCS 5/5-9-2 (West 2012). Use of the word "may" in section 5-9-2 suggests that the revocation of fines is a matter within the court's discretion. See *People v. One 1998 GMC*, 2011 IL 110236, ¶ 16 (legislative use of the word "may" is generally regarded as indicating a permissive or directory reading). Therefore, the circuit court's order will not be altered on review absent an abuse of discretion. *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977).

¶ 14 The circuit court did not abuse its discretion in denying the defendant's motion to revoke fines. Although the defendant was a Department of Corrections inmate who claimed only a nominal income, essentially no assets, and minor dependents, these facts did not necessitate or justify a revocation of fines. Presumably, many Department of Corrections inmates have nominal incomes, essentially no assets, and minor dependents; they cannot all be eligible to have their fines revoked. The relevant question is whether the defendant will be able to pay his fines, or some portion thereof, after he is released from the Department of Corrections, when he presumably will be able to earn money through regular employment. In his motion, the defendant averred that he would remain unable to pay his fines even after his release from prison. However, nobody can predict the future. The defendant could not foresee his future income or foretell his future ability to pay the fines. Likewise, the circuit court could not peer into the defendant's financial future. The defendant did not show any good cause for revocation of his fines.

¶ 15 In their briefs, both parties have indicated to this court that sometime after the circuit court denied the defendant's motion, the defendant was released from prison, and he is now on mandatory supervised release. If the defendant finds that he is severely strapped financially, he may again petition for revocation of fines. Section 5-9-2 does not limit a defendant to only one petition.

¶ 16 In the brief that he filed in this court, the defendant points to some extraneous language in the order denying the motion for revocation of fines. For example, the defendant points out that the order states, "Defendant did not file a Motion to Withdraw his guilty pleas herein, after being advised per Supreme court Rule 605(c), within 30 days

of May 2, 2011." The defendant argues that such language indicates that the circuit court did not consider the substance of the motion for revocation of fines, refused to exercise its discretion in the matter, and wrongfully denied the motion due to a mistaken belief that it lacked jurisdiction because the motion was not filed within 30 days after May 2, 2011, the day of the defendant's guilty pleas and admission to violating probation. The defendant's argument has no merit. The circuit court was merely noting that the defendant had not pursued an appeal from the judgments entered on May 2, 2011. Nowhere in its order did the court express a belief that a time limitation applied to the filing of a motion for revocation of fines, or that it lacked jurisdiction because of the defendant's failure to file within that time limitation. Meanwhile, as previously mentioned, the court explicitly noted that it "may revoke a fine for good cause shown" and explicitly found that "[w]hether there is any good cause to revoke any fine cannot be determined until defendant is out of the Department of Corrections." The circuit court clearly understood that it had jurisdiction and discretion, and it exercised both of them by ruling on the substance of the defendant's motion.

¶ 17 For the reasons stated above, the order denying the defendant's motion to revoke fines is hereby affirmed.

¶ 18 Affirmed.