

NOTICE  
Decision filed 06/22/15. 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) 130429-U

NO. 5-13-0429

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 12-CF-96
	)	
GEORGE L. BARNES,	)	Honorable
	)	Mark W. Stedelin,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Cates and Justice Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the Office of the State Appellate Defender can make no meritorious argument in support of the defendant's appeal, its motion to withdraw as counsel is granted, and the judgment of the circuit court is affirmed.

¶ 2 The defendant, George L. Barnes, appeals the circuit court's denial of his motion to reconsider his sentence. The Office of the State Appellate Defender (OSAD) has been appointed to represent him. OSAD has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). The defendant was given proper notice and time to file briefs,

objections, or any other documents supporting his appeal. He has not filed a response. We have considered OSAD's motion to withdraw and the attached memorandum. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant the OSAD's motion to withdraw as counsel, and we affirm the judgment of the circuit court of Marion County.

¶ 3

### BACKGROUND

¶ 4 The State filed an information on April 2, 2012, charging the defendant with violating an order of protection in contravention of section 12-30(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-30(a)(1) (West 2010) (now see 720 ILCS 5/12-3.4(d) (West 2012))). On June 8, 2012, the State filed an amended information charging the defendant with an additional count of violating an order of protection.

¶ 5 On July 10, 2012, the defendant entered into a negotiated plea agreement wherein the defendant pled guilty to one count of the violation of a protection order in exchange for the State dismissing the second count and recommending a sentence of 101 days in county jail, with credit for 101 days served, and 2 years' conditional discharge. One of the terms of the conditional discharge was that the defendant could have no contact with the victim, Bonnie Burnett.

¶ 6 On April 29, 2013, the State filed a petition to revoke the defendant's conditional discharge, alleging that the defendant violated an order of protection on April 27, 2013. On July 2, 2013, the State filed an amended petition to revoke the conditional discharge, alleging that the defendant had also violated the terms of his conditional discharge by contacting Burnett either on April 26, 2013, or April 27, 2013.

¶ 7 At the plea hearing on July 18, 2013, the defendant admitted the allegations of the petition to revoke, specifically, that he had contact with Burnett either on April 26, 2013, or April 27, 2013. The court explained the charges to the defendant and the defendant indicated that he understood. The court also explained that the defendant had a right to contest the allegations at a hearing where the State would have to prove by a preponderance of the evidence that the allegations were true, and that by admitting to the allegations in the petition, there would be no hearing. The defendant indicated that he understood. The court also explained to the defendant that he could be resentenced to any term that he could have received at the original sentencing hearing and explained the potential sentencing range. The defendant stated that he understood. The State gave a factual basis, to which the defendant stipulated.

¶ 8 The court held a sentencing hearing on August 13, 2013. The defendant's sister testified on his behalf in mitigation. She testified that Burnett had told her and the defendant that she had dropped the order of protection against the defendant. The defendant's sister identified several photos of the defendant and Burnett taken together over the last year during family gatherings. The defendant gave a statement in allocution. He apologized to Burnett. He explained that he was under the impression that Burnett had dropped the order of protection, so he moved back in with Burnett. He asked the court to consider that he was misled when it determined an appropriate sentence for him.

¶ 9 The State argued that the defendant violated the terms of his conditional discharge over which Burnett had no control. The State further argued that the defendant had been convicted of at least eight prior felonies, was on probation for two misdemeanor domestic

batteries when this offense occurred, and had a long history of violating the conditions of probation and conditional discharge. The State requested that the court sentence the defendant to three years in prison.

¶ 10 The court found in mitigation that Burnett had misled the defendant to believe that there was no longer an order of protection. The court sentenced the defendant to 2 years in prison with credit for 227 days in custody. Thereafter, the defendant wrote a letter to the court indicating a desire to appeal, which the circuit clerk treated as a notice of appeal.

¶ 11 ANALYSIS

¶ 12 In its motion to withdraw as counsel on appeal, OSAD lists two possible issues that could be presented on appeal, but contends that those issues are without merit. We review those issues below.

¶ 13 The first issue OSAD identifies is whether the defendant's admission to the petition to revoke was not voluntary. Before accepting a defendant's admission to probation violation, the circuit court should admonish the defendant to determine whether (1) the defendant understands the allegations in the petition to revoke, (2) the defendant understands that he has a right to counsel at a hearing where he can contest the allegations, (3) the admission is voluntary and not made as a result of coercion or threats, (4) the defendant understands the potential sentence upon revocation, and (5) the State provided a factual basis for the admission. *People v. Hall*, 198 Ill. 2d 173, 181 (2001).

¶ 14 In this case, the court complied with all of the requirements in *Hall*, and the defendant indicated that he understood the court's admonishments. The court informed

the defendant about possible resentencing, the nature of the charges, and that the defendant had a right to a hearing where the State would have to prove the allegations in the petition. The court also asked whether the defendant was being forced, threatened, or coerced into admitting a violation of the conditional discharge, and the defendant responded that he was not. The State gave a factual basis for the allegations in the petition. Thus, the defendant could not successfully argue that his admission was not voluntary.

¶ 15 The second issue that OSAD identifies is whether the defendant's sentence on revocation was excessive. The circuit court has considerable discretion when imposing a sentence and such decisions will not be overturned unless there has been an abuse of discretion. *People v. Wilson*, 143 Ill. 2d 236, 250-51 (1991). Indeed, the circuit court is in the best position to determine an appropriate sentence, and a reviewing court may not substitute its own judgment for that of the circuit court. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Further, "[e]ven where there is evidence in mitigation, the court is not obligated to impose the minimum sentence." *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (citing *People v. Madura*, 257 Ill. App. 3d 735, 740-41 (1994)). When a sentence falls within the statutory sentencing range, the circuit court has not abused its discretion unless the sentence is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 16 With the defendant's prior conviction for domestic battery, violating an order of protection is a Class 4 felony. 720 ILCS 5/12-3.4(d) (West 2012). A Class 4 felony is punishable by a term of not less than one year and not more than three years. 730 ILCS

5/5-4.5-45 (West 2012). The court sentenced the defendant to the middle range of two years in prison. The court considered, in mitigation, that the defendant was misled into believing that the order of protection had been dismissed. In aggravation, the court considered the defendant's lengthy criminal history, including past domestic battery convictions involving the same victim as the order of protection violation. In light of the factors in aggravation and mitigation, the sentence was not disproportionate to the nature of the offense. The court did not abuse its discretion when it sentenced the defendant to two years in prison.

¶ 17

#### CONCLUSION

¶ 18 For the foregoing reasons, the motion of OSAD to withdraw as counsel on appeal is granted, and the judgment of the circuit court of Marion County is affirmed.

¶ 19 Motion granted; judgment affirmed.