

2016 IL App (2d) 140564-U
No. 2-14-0564
Order filed March 29, 2016

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Ogle County.
)	
Plaintiff-Appellee,)	
)	
v.	)	Nos. 02-TR-7374
	)	02-TR-7375
	)	02-TR-7376
	)	02-TR-7377
	)	02-TR-8275
	)	02-TR-8276
	)	05-CM-698
)	
WILLIAM D. PEYTON,	)	Honorable
	)	John C. Redington,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's petition to revoke or modify his fines: although the court erred in deeming the petition untimely, it properly ruled that the mere financial impact of the fines was not good cause for revocation or modification; although defendant added that his warrants on the fines were preventing him from obtaining drug treatment, the court properly addressed that point by quashing the warrants.

¶ 2 Defendant, William D. Peyton, appeals from an order of the circuit court of Ogle County denying his *pro se* petition to revoke or modify fines pursuant to section 5-9-2 of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-2 (West 2014)). Because the trial court did not abuse its discretion in denying defendant's petition on the merits, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The trial court imposed against defendant, in several cases, fines totaling \$1,200. As of March 31, 2014, the fines remained unpaid.

¶ 5 On March 31, 2014, defendant filed his petition. The petition asserted that defendant's fines were "manifestly oppressive, *** create[d] a certain hardship, and [were] burdensome for [defendant], and his family." The petition further stated that because of defendant's "physical and mental conditions [he was] unable to pay the imposed fines and further lack[ed] the ability to pay them, [then] and in the future."

¶ 6 Defendant filed a letter along with his petition. In the letter, he discussed his need for a long-term drug treatment program. He explained that he could not get a furlough from jail to attend treatment "as long as [his] warrants [were] pending." Defendant wrote that the court had "the power to revoke [his] fines or at least modify the method of payment." He added that he wanted the court to "lift the warrant[s] so [he could] go to treatment." Defendant identified no other reason for revoking or modifying his fines.

¶ 7 On May 2, 2014, the trial court conducted a hearing on defendant's petition. After reviewing defendant's petition and supporting letter, the court asked defendant what he wanted it to do about his fines. Defendant answered that "the fines [had] created a certain hardship on [his] going through drug rehabilitation." Defendant added that the "fines just created a hardship. [He was] unable to pay them at [that] time and [did not] know if [he would] be able to pay them

soon in the future.” When the court asked defendant if he wanted it to “do away with [the] fines,” defendant responded that he wanted the court to “[m]odify them or, revoke them, yes.”

¶ 8 Without further discussion, the trial court stated that it was denying the petition for two reasons. First, the petition had been filed beyond the 30 days allowed by law for seeking to modify a sentence. Second, the court stated that “fines in criminal cases are suppose[d] to be a hardship, alright, that’s why they’re imposed.” The court then denied the petition.

¶ 9 After indicating that he would like to appeal, defendant added that “the reason why [he was] brought [to court that day was] because [he had] warrants on the fines outstanding” and that he was trying “to go to the treatment program for rehabilitation.” Defendant explained that he was “asking the court to, to stay the warrants, or lift the warrants so that [he could] go to treatment.”

¶ 10 The trial court, in turn, stated, “Alright, here’s what I’m going to do. I’ll quash the warrants in your cases.” The court then set the matter for June 30, 2014, and required defendant to appear unless he had paid his fines.

¶ 11 On May 29, 2014, defendant filed his notice of appeal. On June 30, 2014, defendant appeared, and the trial court continued the matter to September 28, 2014. On that date, the court found that defendant had the ability to pay \$40 per month toward his fines. The court also ordered defendant to appear monthly unless he had paid his fines in full.

¶ 12

II. ANALYSIS

¶ 13 On appeal, defendant contends that the trial court erred in ruling that his petition was untimely, as section 5-9-2 allows a petition to be brought at any time. Alternatively, defendant asserts that the court abused its discretion in denying his petition on the merits, because it never considered whether defendant had shown good cause within the meaning of section 5-9-2.

¶ 14 The State agrees that the trial court erred in finding that the petition was untimely. That concession is correct, as section 5-9-2 does not impose any time limit on a petition to revoke or modify fines. See *People v. Mingo*, 403 Ill. App. 3d 968, 971-72 (2010). Thus, the court erred in ruling that the petition was time-barred.

¶ 15 We turn next to the issue of whether the trial court abused its discretion in otherwise denying the petition. In doing so, we note that the parties agree that abuse of discretion is the applicable standard of review. We agree, as the use of the word “may” in section 5-9-2 indicates that the revocation or modification of fines is a matter of discretion. See *People v. One 1998 GMC*, 2011 IL 110236, ¶ 16 (legislative use of “may” is generally regarded as permissive or directory language). An abuse of discretion will be found only where no reasonable person would agree with the trial court’s decision. *In re M.P.*, 408 Ill. App. 3d 1070, 1073 (2011). When a court is required to exercise discretion, the failure to do so can itself constitute an abuse of discretion. *People v. Newborn*, 379 Ill. App. 3d 240, 248 (2008).

¶ 16 Section 5-9-2 provides, in pertinent part, that a 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 2014). The Council Commentary states, in part, that section 5-9-2 was “designed to mitigate a fine on a showing of inability to pay or hardship.” 730 ILCS Ann. 5/5-9-2, Council Commentary-1973, at 303 (Smith-Hurd 2007). It further states that a trial court “may modify payments by decreasing installments or extending the period for payment or the fines may be revoked altogether.” 730 ILCS Ann. 5/5-9-2, Council Commentary-1973, at 303 (Smith-Hurd 2007).

¶ 17 Section 5-9-2 permits the trial court to revoke or modify a fine upon a showing of good cause. *People v. Bennet*, 144 Ill. App. 3d 184, 186 (1986). The good-cause requirement in

section 5-9-2 indicates that the legislature intended to provide a defendant relief from fines when factors, external to the original proceeding, warrant the revocation or modification of the fines to ease a defendant's financial burden. *Mingo*, 403 Ill. App. 3d at 972; see also *People v. Ruff*, 115 Ill. App. 3d 691, 695 (1983) (statutory safeguards, such as section 5-9-2, exist for those who, in good faith, are unable to pay a fine).

¶ 18 We begin by emphasizing that a trial court is presumed to know and follow the law, unless the record affirmatively indicates otherwise. *In re Jonathon C.B.*, 2011 IL 117750, ¶ 72. Here, the record does not affirmatively indicate that the trial court did not know, or follow, section 5-9-2. The petition clearly identified section 5-9-2 as the legal basis for relief. Thus, the court was aware of the applicability of section 5-9-2 to defendant's petition.

¶ 19 In contending that the record affirmatively shows that the trial court failed to assess whether he had shown good cause under section 5-9-2, defendant points to the court's comment that fines in criminal cases inherently create a hardship. That comment, however, does not show that the court did not know, or follow, section 5-9-2. Instead, it shows that the court considered the petition in light of section 5-9-2 and disagreed with defendant's barebones assertion that the mere imposition of the fines created a financial hardship sufficient to support a claim for relief under that provision.

¶ 20 We note that the trial court was correct in that regard, as a claim of good cause based on the mere financial impact of a fine is insufficient to support relief under section 5-9-2. Indeed, if good cause could be shown by the mere financial impact of a fine, every defendant ordered to pay a fine would be entitled to relief under section 5-9-2. Such an interpretation, however, would render the term "good cause" meaningless. See *People v. Simpson*, 2015 IL 116512, ¶ 29.

Thus, the court not only considered defendant's claim of financial hardship in light of section 5-9-2 but properly rejected it.

¶ 21 Aside from defendant's generalized assertion regarding the financial impact of the fines, he further asserted, as good cause for relief under section 5-9-2, his desire to participate in a drug treatment program. In that regard, the court also properly considered defendant's claim of good cause. Indeed, although the court did not revoke or modify defendant's fines, it effectively granted him the relief he told the court he was requesting, by quashing the warrants that were preventing him from participating in drug treatment. Thus, the court did not abuse its discretion in denying his petition on the merits.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Ogle County denying defendant's petition to revoke or modify his fines. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 23 Affirmed.