

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).

2018 IL App (4th) 160375-U

No. 4-16-0375

FILED

November 20, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
MARQUKIE D. MARSHALL,)	No. 15CF54
Defendant-Appellant.)	
)	Honorable
)	John P. Schmidt,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted the office of the State Appellate Defender’s motion to withdraw as appellate counsel and affirmed as no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us on a motion from the office of the State Appellate Defender (OSAD) to withdraw as appellate counsel on the ground no meritorious issue could be raised on appeal. We grant OSAD’s motion and affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2015, defendant, Marqukie D. Marshall, entered a negotiated guilty plea to aggravated battery (720 ILCS 5/12-3.05(d)(4), (h) (West 2014)), a Class 2 felony, and was sentenced to three years’ probation. The plea stemmed from a January 16, 2015, incident where

defendant punched a St. John's Hospital security officer in the torso. As part of the conditions of his probation, defendant was required to (1) not violate any criminal statutes, (2) complete a substance abuse assessment, and (3) report to an assigned court services officer as directed.

¶ 5 In November 2015, the State filed a petition to revoke defendant's probation. The State alleged, in part, defendant violated the conditions of his probation by (1) committing the offense of disorderly conduct; (2) failing to complete a substance abuse assessment; and (3) failing to report to his assigned court services officer on July 21, 2015.

¶ 6 In March 2016, the trial court held a hearing on the State's petition to revoke defendant's probation. The State presented testimony from probation officers Brian Rapozo and Patrick Budny. Defendant testified in his defense. The following is a summary of the relevant evidence presented.

¶ 7 Officer Rapozo testified defendant, as a condition of his probation, was required to not violate any criminal statute. The State requested the trial court take judicial notice defendant pleaded guilty in Sangamon County case No. 15-CM-1366 to one count of disorderly conduct for threatening Officer Budny. Defense counsel did not object but noted for the record defendant indicated he "was suffering from a mental defect at that time." The court took judicial notice of defendant's guilty plea. Defendant testified he threatened Officer Budny as he felt like Officer Budny was against him, and defendant also threatened to take his own life in the same incident.

¶ 8 Officer Rapozo testified defendant, as a condition of his probation, was required to complete a substance abuse assessment. Officer Budny testified he referred defendant to a place to complete an assessment. Neither Officer Budny nor Officer Rapozo received a

verification indicating defendant completed the assessment. Officer Budny testified defendant did not provide him with any information concerning the assessment. Defendant testified he attempted to get an assessment done at two different places but his attempts were unsuccessful and he advised Officer Budny of his attempts.

¶ 9 Officers Rapozo and Budny testified defendant missed scheduled appointments. Officers Rapozo and Budny testified defendant was contacted and informed of the need to report to an appointment on July 21, 2015. Defendant did not report on that date. Defendant was sent letters by mail informing him of additional appointments. Defendant did not report to those appointments. Officers Rapozo and Budny testified defendant indicated he was homeless in August 2015. Defendant testified he had been homeless since May 2015, and he advised Officer Budny of his homelessness.

¶ 10 After considering the evidence and arguments presented, the trial court found the State proved the allegations in its petition. The court revoked defendant's probation.

¶ 11 On May 12, 2016, the trial court held a sentencing hearing. The court was presented with a presentence investigation report, which detailed defendant's extensive criminal history as well as his three sentences of probation in Sangamon County that were either terminated or revoked. The court also heard testimony from Jimmy Austin, a deacon and assistant superintendant at a church where defendant attended. Austin testified defendant attended church and a bible class on a regular basis and helped with cleaning around the church. Austin mentored defendant and, around May 2015, Austin and his wife allowed defendant to reside at a barbershop operated by Austin's wife. Austin testified defendant continued to reside at the barbershop until his November 2015 arrest. Austin indicated he would continue to mentor

defendant and assist him with finding housing and employment if he was released into the community. Austin believed defendant was capable of being rehabilitated outside of prison.

¶ 12 In issuing its recommendation, the State highlighted defendant's extensive criminal history and prior probation revocations. It noted defendant had been receiving Austin's mentorship "during the last two years when all of these things took place," and Austin's testimony indicating defendant had been living at the barbershop between May and November 2015 belied defendant's testimony at the hearing on the petition to revoke indicating he was homeless since May 2015. The State argued, based on defendant's criminal history and his behavior while on probation, he was not suitable for a community-based sentence. The State recommended a five-year prison sentence.

¶ 13 Defense counsel highlighted defendant pleaded guilty to aggravated battery, the aggravated battery did not involve serious bodily injury, and the victim of the aggravated battery did not seek restitution. Defense counsel also highlighted defendant's history of serious physical and mental health issues. With respect to defendant's mental health issues, defense counsel noted (1) defendant's threat to Officer Budny was accompanied by a threat of suicide and (2) conflicting information from various mental health providers compounded the difficulties defendant was having in obtaining treatment. Defense counsel recommended probation.

¶ 14 Following recommendations, defendant made a statement in allocution, requesting leniency and a community-based sentence.

¶ 15 After hearing the evidence, recommendations, and statement in allocution and considering the statutory factors in aggravation and mitigation and a possible community-based sentence, the court sentenced defendant to four years' imprisonment. In its ruling, the court noted

defense counsel made compelling arguments and the record documented some of defendant's mental health issues. The court highlighted defendant's extensive criminal history. The court found defendant understood the consequences of his actions and continued to engage in criminal activity. The court concluded a sentence of probation would risk further harm to the community.

¶ 16 On May 13, 2016, defendant filed a motion to reconsider his sentence. Following a hearing that same day, the trial court denied defendant's motion. Defendant filed a notice of appeal, and the court appointed OSAD to represent defendant on appeal.

¶ 17 On March 27, 2018, OSAD filed a motion for leave to withdraw as counsel, asserting no meritorious claim could be raised on appeal. This court allowed defendant leave to file a response to OSAD's motion by May 1, 2018.

¶ 18 On April 12, 2018, OSAD filed a motion for an extension of time for defendant to file a response to its motion for leave to withdraw as counsel based on information it received indicating defendant was hospitalized. This court granted OSAD's motion and allowed defendant leave to file a response by June 28, 2018. Defendant has not done so.

¶ 19 **II. ANALYSIS**

¶ 20 OSAD contends, after thoroughly reviewing the record, it concluded no meritorious claim could be raised on appeal.

¶ 21 **A. Underlying Guilty Plea**

¶ 22 OSAD asserts no reasonable argument could be made to challenge the underlying guilty plea. We agree.

¶ 23 When no direct appeal is taken from a criminal judgment imposing probation and the time for appeal has expired, a reviewing court is precluded from reviewing the propriety of

that judgment in an appeal from a subsequent revocation of probation, unless the underlying judgment of conviction is void. *People v. Johnson*, 327 Ill. App. 3d 252, 256, 762 N.E.2d 1180, 1183 (2002); *People v. Gregory*, 379 Ill. App. 3d 414, 418, 883 N.E.2d 762, 765-66 (2008).

¶ 24 Defendant did not file a motion to withdraw his guilty plea or a notice of appeal, and the time for any appeal has expired. Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). The record does not indicate the guilty plea is void due to a lack of personal or subject-matter jurisdiction or because it is based on a facially unconstitutional and void *ab initio* statute. See *People v. Price*, 2016 IL 118613, ¶ 31, 76 N.E.3d 1240.

¶ 25 **B. Probation Revocation**

¶ 26 OSAD asserts no reasonable argument could be made to challenge the trial court's revocation of defendant's probation. We agree.

¶ 27 In a probation-revocation proceeding, the State is required to prove a violation of a previously imposed condition of probation. *People v. Williams*, 303 Ill. App. 3d 264, 267, 707 N.E.2d 729, 731 (1999); 730 ILCS 5/5-6-4(c) (West 2014). The proceeding is civil in nature, and proof of a probation violation need only be shown by a preponderance of the evidence. *People v. Woznick*, 278 Ill. App. 3d 826, 828, 663 N.E.2d 1037, 1038 (1996). A violation of a single condition of probation is sufficient to warrant revocation. See *In re Seth S.*, 396 Ill. App. 3d 260, 274, 917 N.E.2d 1182, 1193 (2009). A trial court's finding of a probation violation will not be overturned unless it is against the manifest weight of the evidence. *Williams*, 303 Ill. App. 3d at 267. "A finding is against the manifest weight of the evidence only if a contrary result is clearly evident." *People v. Clark*, 313 Ill. App. 3d 957, 960, 731 N.E.2d 432, 435 (2000).

¶ 28 The trial court found the State proved defendant violated a condition of his

probation by committing the offense of disorderly conduct. The State presented evidence showing defendant (1) was required to not violate any criminal statute as a condition of his probation and (2) pleaded guilty to disorderly conduct for threatening Officer Budny. Defendant further testified admitting to threatening Officer Budny. Based on this evidence, the court's finding of a probation violation is not against the manifest weight of the evidence. On this ground alone, the trial court would have been within its discretion to revoke defendant's probation.

¶ 29 C. Defendant's Sentence

¶ 30 OSAD asserts no reasonable argument could be made to challenge defendant's sentence following the revocation of his probation. We agree.

¶ 31 "When a sentence of probation has been revoked, the trial court may impose any other sentence that was available *** at the time of the initial sentencing." (Internal quotation marks omitted.) *People v. Somers*, 2012 IL App (4th) 110180, ¶ 21, 970 N.E.2d 606; see also 730 ILCS 5/5-6-4(e) (West 2014). "[T]he sentence imposed must not be punishment for the probation violation." *People v. Risley*, 359 Ill. App. 3d 918, 920, 834 N.E.2d 981, 983 (2005). "A sentence within the statutory range for the offense will not be disturbed as an abuse of the sentencing court's discretion unless this court is strongly persuaded that the sentencing judge intended to penalize the defendant for violating his probation." *Id.* at 920-21.

¶ 32 Defendant was convicted of a Class 2 felony (720 ILCS 5/12-3.05(d)(4), (h) (West 2014)) and faced a possible prison sentence between three and seven years (730 ILCS 5/5-4.5-35(a) (West 2014)). The trial court indicated it considered the statutory factors in aggravation and mitigation and a possible community-based sentence when rendering its sentence. The

sentence was within the statutory range and was one year less than the sentence the State requested. Nothing in the record indicates the sentence was disproportionate to the offense. To the extent the court considered defendant's conduct leading up to the revocation of his probation, it did so when considering defendant's rehabilitative potential and the threat he posed to the community. Nothing in the record shows the sentence imposed was intended to penalize defendant for violating his probation. We also note defendant has completed the required period of imprisonment and is now serving his term of mandatory supervised release. See <https://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last visited October 29, 2018).

¶ 33

III. CONCLUSION

¶ 34

We grant OSAD's motion to withdraw as counsel and affirm.

¶ 35

Affirmed.