

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).

2019 IL App (4th) 170217-U

NO. 4-17-0217

**FILED**  
August 22, 2019  
Carla Bender  
4<sup>th</sup> 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.	)	Coles County
DUSTIN M. TROSPER,	)	No. 10CF416
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa K. Righter,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Holder White and Justice Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where the trial court failed to provide defendant with Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) admonishments during his probation revocation proceedings, the court's judgment, revoking defendant's probation and resentencing him to a term of imprisonment, is vacated and the matter remanded for new proceedings.
- ¶ 2 Following a jury trial, defendant, Dustin M. Trosper, was found guilty of aggravated domestic battery and unlawful restraint. In April 2013, the trial court sentenced him to concurrent terms of 30 months' probation. In March 2015, the State filed a petition to revoke defendant's probation. Later, it filed two supplemental petitions to revoke. After defendant stipulated that there was evidence sufficient to show a violation of his probation, the court revoked his probation and imposed consecutive sentences of 6 years in prison for aggravated domestic battery and 30 months' probation for unlawful restraint. Defendant appeals, arguing

(1) the court failed to properly admonish him pursuant to Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) prior to accepting his stipulation in connection with the State's second supplemental petition to revoke and (2) various errors occurred at resentencing, requiring a new resentencing hearing. We vacate the trial court's judgment and remand with directions.

¶ 3

### I. BACKGROUND

¶ 4 In August 2010, the State charged defendant with three counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4) (West 2008)), one count of unlawful restraint (720 ILCS 5/10-3 (West 2008)), and one count of aggravated domestic battery (720 ILCS 5/12-3.3 (West 2008)). In January 2013, a jury found defendant not guilty of all three aggravated-criminal-sexual-assault counts but guilty of both the unlawful-restraint and aggravated-domestic-battery counts. In April 2013, the trial court sentenced defendant to two concurrent terms of 30 months' probation.

¶ 5 In March 2015, the State filed a petition to revoke defendant's probation, alleging he committed new criminal offenses of aggravated criminal sexual assault, criminal sexual assault, and unlawful restraint in Vermilion County as charged in case No. 15-CF-135. In April 2016, the State filed a supplemental petition to revoke, alleging defendant violated his probation by committing the offense of aggravated battery as charged in Vermilion County case No. 15-CF-771. Finally, in June 2016, the State filed a second supplemental petition to revoke, asserting defendant violated the terms of his probation by committing and being convicted of aggravated battery "as outlined in" Vermilion County case No. 15-CF-135.

¶ 6 In July 2016, the trial court conducted a hearing on the matter. The State informed the court that it intended to proceed on its second supplemental petition to revoke defendant's

probation. It stated that the basis for that petition was defendant's recent plea of guilty in Vermilion County "to the offense of aggravated battery strangulation," for which he was sentenced to three years in prison. At the State's request and defendant voicing "[n]o objection," the court took judicial notice of certified records from Vermilion County showing defendant's guilty plea and three-year prison sentence. The State argued "that the [c]ourt taking judicial notice" of defendant's conviction should result in its second supplemental petition to revoke being granted and defendant's counsel "agree[d] that [the Vermilion County conviction] represent[ed] a violation of the terms of [defendant's] probation." Ultimately, the court determined that defendant had violated the terms of his probation and that the State met its burden with respect to its second supplemental petition to revoke. It then set the matter for resentencing.

¶ 7 In October 2016, the trial court conducted a hearing and resented defendant to 6 years in prison for aggravated domestic battery and a consecutive term of 30 months' probation for unlawful restraint. Thereafter, defendant filed motions to reconsider his sentences, which the court denied.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues that the trial court erred by failing to provide him with admonishments pursuant to Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003) during his probation revocation proceedings. He maintains that, as a result, the court's revocation of his probation should be vacated and the matter remanded for further proceedings. The State concedes that error occurred.

¶ 11 Under Rule 402A (eff. Nov. 1, 2003), the trial court must provide certain admonishments to a defendant who either admits to a probation violation or stipulates that the evidence is sufficient to revoke his or her probation. Specifically, Rule 402A(a) provides as follows:

“The court shall not accept an admission to a violation, or a stipulation that the evidence is sufficient to revoke, without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant 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.” *Id.*

Rule 402A further requires that before accepting a defendant’s admission or stipulation, the trial court must determine that the admission or stipulation is voluntary and not made on the basis of any coercion or promise. Ill. S. Ct. R. 402A(b) (eff. Nov. 1, 2003).

¶ 12 The purpose of Rule 402A admonishments is to ascertain that the defendant understands his or her admission or stipulation, the rights being waived, and the potential consequences of an admission or stipulation. *People v. Saleh*, 2013 IL App (1st) 121195, ¶ 16, 995 N.E.2d 375. A trial court must substantially comply with Rule 402A and a court’s substantial compliance may be established by “an affirmative showing in the record that the defendant understood each of the required admonitions.” (Internal quotation marks omitted.) *Id.*

¶ 14. Additionally, “[a] trial court’s compliance with the admonition requirements of Rule 402A presents a legal question, which we review *de novo*.” *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007).

¶ 13 Here, we agree with the parties that the record fails to reflect proper Rule 402A admonishments. During the revocation proceedings, defense counsel agreed that defendant’s Vermilion County conviction was sufficient to establish a violation of his probation. However, the record fails to show that the court addressed defendant in open court, provided any Rule 402A admonishments, or determined defendant’s understanding of the same. The court also

made no effort to determine that defendant's stipulation was voluntarily made. Given the circumstances presented, we accept the State's concession, vacate the trial court's judgment, and remand to allow defendant to withdraw his stipulation that the evidence presented on the State's second supplemental petition to revoke was sufficient to establish a violation of his probation.

¶ 14 Defendant further argues that, on remand, his case should be reassigned to the trial judge who presided over his jury trial and original sentencing, Judge James Glenn, rather than the trial judge who presided over the revocation proceedings, Judge Teresa K. Righter. We take judicial notice of the fact that Judge Righter has retired since presiding over defendant's revocation proceedings. See *In re Estate of Bohn*, 2019 IL App (1st) 173083, ¶ 23 (taking judicial notice of the trial judge's retirement after the initiation of the appeal); *People v. Smith*, 326 Ill. App. 3d 831, 855, 761 N.E.2d 306, 328 (2001) ("We take judicial notice that the trial judge has retired from the bench, therefore, a different judge will consider [the postconviction] petition on remand."). Accordingly, on remand, defendant's case will necessarily be reassigned to a judge other than Judge Righter. We direct that reassignment occur pursuant to section 5-4-1(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-1(b) (West 2016) ("The judge who presided at the trial or the judge who accepted the plea of guilty shall impose the sentence unless he is no longer sitting as a judge in that court.")).

¶ 15 Finally, we note that on appeal defendant raises additional challenges to the underlying resentencing proceedings. Specifically, he argues that (1) the trial judge improperly relied upon evidence of his Vermilion County conviction at resentencing, resulting in an excessive sentence; (2) evidence was improperly admitted at resentencing, including unreliable hearsay testimony and "a wrongly-procured" sex offender evaluation that was utilized in

violation of his fifth-amendment right against self incrimination; and (3) his resentencing hearing should have been presided over by Judge Glenn rather than Judge Righter. Defendant acknowledges that he forfeited these issues by failing to raise them with the trial court; however, he maintains this court may reach the merits of his claims under the plain error doctrine or because he was denied his right to effective assistance of counsel.

¶ 16 “As a general rule, a court of review will not decide moot or abstract questions or render advisory opinions.” *People v. Campa*, 217 Ill. 2d 243, 269, 840 N.E.2d 1157, 1173 (2005). “Courts of review also ordinarily will not consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided.” *Barth v. Reagan*, 139 Ill. 2d 399, 419, 564 N.E.2d 1196, 1205 (1990).

¶ 17 Here, we find it unnecessary to address defendant’s additional claims of error with respect to his resentencing. Given our resolution of his improper-admonishment claim, defendant is entitled to both a new hearing on the State’s petition to revoke and, if necessary, a new resentencing hearing. Additionally, his case will be heard before a different judge than the judge who presided over the previous revocation proceedings. Consequently, addressing claims of error related to defendant’s original resentencing would result in an advisory decision as to those issues.

¶ 18 Further, we decline defendant’s invitation to address his resentencing issues on the basis that they are likely to recur on remand. See *Pielet v. Pielet*, 2012 IL 112064, ¶ 56, 978 N.E.2d 1000 (stating a reviewing court may exercise its discretion to address issues that are likely to recur on remand to provide guidance to the lower court and expedite the termination of the litigation; however, “[w]ith limited exception \*\*\* courts should refrain from deciding an

issue when resolution of the issue will have no effect on the disposition of the appeal presently before the court”). As defendant acknowledges, none of the resentencing issues he presents on appeal were raised with the trial court. On remand, defendant will have the opportunity to present arguments to the court and challenges to the State’s evidence regarding these forfeited issues should they arise.

¶ 19

### III. CONCLUSION

¶ 20

For the reasons stated, we vacate the trial court’s judgment and remand to allow defendant to withdraw his stipulation that the evidence presented in connection with the State’s second supplemental petition to revoke was sufficient to establish a violation of his probation and with directions that the matter be assigned to a trial judge pursuant to section 5-4-1(b) of the Code.

¶ 21

Vacated and remanded with directions.