

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) 190035-U

NO. 4-19-0035

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 2, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
KIMBERLY PETERSEN,)	No. 14CF484
Defendant-Appellant.)	
)	Honorable
)	Brien J. O'Brien,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Because the trial court lacked jurisdiction to revoke defendant’s probation, the court’s judgment revoking probation and resentencing defendant to three years in prison is vacated.

¶ 2 Defendant, Kimberly Petersen, pleaded guilty to the offense of burglary (720 ILCS 5/19-1(a) (West 2012)) and was sentenced to 24 months’ probation. Later, the trial court revoked her probation and resentenced her to three years in prison. Defendant appeals, arguing the court lacked jurisdiction to revoke her probation. We agree and vacate the court’s judgment.

¶ 3 I. BACKGROUND

¶ 4 On October 31, 2014, the State charged defendant with burglary. *Id.* On December 8, 2014, defendant pleaded guilty to that offense, and the trial court sentenced her to 24 months’ probation.

¶ 5 On December 7, 2016, one day prior to the expiration of defendant’s 24-month probationary term, the State filed a petition to revoke defendant’s probation. It alleged defendant violated the terms of her probation by failing to report to the probation department as directed and “complete 125 hours of Public Service Employment.” On December 9, 2016, the trial court issued a warrant for defendant’s arrest based on her alleged probation violations. On April 10, 2017, defendant was arrested pursuant to the warrant, and on April 17, 2017, she appeared in court and was provided with a copy of the petition to revoke.

¶ 6 Ultimately, the State filed two supplemental petitions to revoke defendant’s probation. On October 31, 2018, defendant appeared in court and admitted the allegations of the State’s second supplemental petition. The trial court accepted defendant’s admission and set the matter for resentencing. On January 4, 2019, the court revoked defendant’s probation and resentedenced her to three years in prison. Defendant moved for reconsideration of her sentence, which the court denied.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues the trial court lacked jurisdiction to revoke her probation. She asserts that because her 24-month probation term expired before the trial court issued a warrant for her arrest in connection with the petition to revoke and before she was personally served with a copy of the State’s petition, the trial court was without authority to revoke her probation and resentence her on her original offense.

¶ 10 The State concedes that the trial court lacked jurisdiction to revoke defendant’s probation. It agrees with defendant that the trial court’s judgment and sentence should be vacated

and that the mandate in this case should issue immediately. Additionally, defendant has filed with this court an “AGREED MOTION FOR EXPEDITED DISPOSITION AND EXPEDITED ISSUANCE OF THE MANDATE,” noting the State’s concession and the parties’ agreement that this court’s mandate should issue immediately because vacating the trial court’s judgment and sentence entitles defendant to an immediate release from prison.

¶ 11 The Unified Code of Corrections (730 ILCS 5/5-6-4(a) (West 2014)) provides that when a petition alleging a violation of a defendant’s probation has been filed by the State, the trial court may issue a notice to the defendant, a summons to the defendant to appear in court, or a warrant for the defendant’s arrest. It also states as follows:

“Personal service of the petition for violation of probation or the issuance of such warrant, summons or notice shall toll the period of probation *** until the final determination of the charge, and the term of probation *** shall not run until the hearing and disposition of the petition for violation.” *Id.*

Absent tolling, a court “has no authority to revoke a defendant’s probation after the period of probation has expired.” *People v. Martinez*, 150 Ill. App. 3d 516, 517-18, 501 N.E.2d 1003, 1004 (1986); see also *People v. Thoman*, 381 Ill. App. 3d 268, 274, 886 N.E.2d 518, 523 (2008) (stating that “[a]bsent tolling, the circuit court was divested of subject matter jurisdiction upon the expiration of the defendant’s term of probation”).

¶ 12 Here, the State filed its initial petition to revoke defendant’s probation one day prior to the expiration of her 24-month probationary term. However, the record shows that defendant’s period of probation expired before any of the circumstances that allow for tolling occurred. Specifically, the trial court did not issue a warrant for defendant’s arrest on the State’s

petition until one day after her term of probation expired. Additionally, defendant was not personally served with the State's petition to revoke until months later, after her arrest on the warrant.

¶ 13 Accordingly, we agree with the parties that the trial court lacked jurisdiction to revoke defendant's probation and resentence her to a term of imprisonment. We accept the State's concession, vacate the court's judgment, and grant defendant's motion for an expedited disposition and an immediate issuance of the mandate.

¶ 14 III. CONCLUSION

¶ 15 In closing, we note our approval of the manner in which the Office of the State Appellate Defender (OSAD) for the Fourth District promptly addressed defendant's appeal. See *People v. Cisco*, 2019 IL App (4th) 160515, ¶ 46, 123 N.E.3d 1258 (noting OSAD's need for "a mechanism for the early identification of appeals *** which have obvious merit *and* require remedial action be taken to avoid unwarranted incarceration of a defendant" (Emphasis in original.)). By swiftly identifying the meritorious issue presented by the appellate record in this case and recognizing the need for immediate action, OSAD has enabled this court to timely grant defendant effective relief.

¶ 16 For the reasons stated, we vacate the trial court's judgment.

¶ 17 Judgment vacated; mandate to immediately issue.