

NOTICE
Decision filed 09/12/19. 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.

2019 IL App (5th) 160354-U

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).

NO. 5-16-0354

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Effingham County.
)	
v.)	No. 15-CF-20
)	
AARON BAKER,)	Honorable
)	Kimberly G. Koester,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The revocation of the defendant’s probation for consuming alcohol was not contrary to the manifest weight of the evidence under circumstances where the condition was included in the written probation order and the defendant was verbally advised of it by the trial court and his probation officer.

¶ 2 The defendant, Aaron Baker, appeals from a judgment by the circuit court of Effingham County that revoked his probation and sentenced him to five years’ imprisonment. On appeal, the defendant argues the court’s order revoking his probation based on the alleged violation of a condition of his probation was against the manifest

weight of the evidence, because he was never provided a written certificate informing him of the condition. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4

A. The Defendant's Guilty Plea and Sentencing Hearing

¶ 5 In February 2015, the defendant was charged with failure to report a change of address as required by the Sex Offender Registration Act within three days of changing his residency (730 ILCS 150/6 (West 2014)). On May 11, 2015, the defendant appeared before the trial court and entered a guilty plea pursuant to an agreement with the State. At the defendant's guilty plea and sentencing hearing, the trial court personally examined the defendant, confirming he understood the charge and potential sentence he faced. Through further examination, the court also determined that the defendant had no questions or concerns about the hearing, that the defendant could read and write "very well," and that he had not consumed any substances that would impair his ability to understand the proceedings.

¶ 6

The State then informed the trial court of the terms of the defendant's plea agreement. In exchange for the defendant's guilty plea, the State agreed to dismiss charges in another case against him and a petition to revoke probation in a third case against him. Pursuant to the agreement, the defendant would: (1) be placed on 30 months' probation with the standard terms and conditions to apply; (2) serve 180 days in the

Effingham County jail;¹ (3) pay a fine, costs, and restitution; and (4) obtain a mental health evaluation, complete any recommended treatment, and take all prescribed medication. Among the mandatory conditions of probation negotiated as part of the plea agreement, the defendant was prohibited from using drugs and alcohol. To enforce the preceding condition, the defendant was subject to random drug and alcohol testing.

¶ 7 The trial court accepted the terms of the negotiated plea agreement. Upon reviewing the written guilty plea, the court questioned the defendant to confirm that he signed it freely and voluntarily, understood the rights he was waiving by entering the plea, and was not forced or threatened to sign it. After the State recited the factual basis supporting the defendant's charge, the court found a factual basis existed, entered a judgment of guilty, and sentenced the defendant pursuant to the terms of the negotiated plea agreement. The court then recited each term of the defendant's sentence, including the prohibition against consuming drugs and alcohol and that the defendant would be subject to random drug and alcohol testing at the request of his probation officer or anyone at the officer's direction. The defendant acknowledged that he understood his sentence. At the end of the hearing, the defendant told the court he did not have any questions.

¶ 8 The judgment on sentence of probation entered by the trial court on May 11, 2015, imposes the negotiated probation conditions, including the condition that the defendant was prohibited from using or possessing alcohol or illicit drugs and would be subject to

¹As of the May 11, 2015, guilty plea and sentencing hearing at which he was sentenced to serve 180 days in the Effingham County jail, the defendant had already served 88 days in jail, and the court determined day-for-day credit would apply to his sentence.

random drug and alcohol testing. It contains spaces for the defendant, along with his probation officer, to acknowledge receipt and review of the document, but those spaces were left blank.

¶ 9 The docket entry recorded after the May 11, 2015, guilty plea and sentencing hearing indicates that the defendant pleaded guilty. The docket entry also recites the terms of the defendant's sentence, including "NO D/A WITH TESTING." Further, the docket entry reflects a number of documents, including the judgment on sentence of probation, were filed on May 11, 2015, and copies were given to the defendant.

¶ 10 B. The Defendant's Probation Violation and Ensuing Proceedings

¶ 11 On June 18, 2015, approximately five weeks after the defendant's guilty plea and sentencing hearing, the defendant's probation officer, Ryan Winters, filed a probation violation report. Winters's report states that the defendant tested positive for alcohol on June 10, 2015, and that he was charged with aggravated battery on June 12, 2015.

¶ 12 The following day, the State filed a petition to revoke the defendant's probation based on the conduct alleged in Winters's probation violation report. The petition came on for hearing on October 5, 2015.²

¶ 13 Winters testified that a condition of the defendant's probation was that he abstain from drugs and alcohol and that Winters administered a drug and alcohol test to the defendant on June 10, 2015. The State then presented testimony from the probation department's drug testing specialist as to the procedures for testing probationers' urine

²During the hearing, the State indicated it would only proceed on the allegation that the defendant tested positive for alcohol.

samples for the presence of EtG, the metabolite of alcohol; the testing and retesting of the defendant's sample; the chain of custody of the defendant's sample; and that the defendant's sample tested positive for EtG.

¶ 14 The trial court found the State had met its burden of proving by a preponderance of the evidence that the defendant violated a condition of his probation based on the fact he was specifically ordered to abstain from the use or possession of alcohol and tested positive for having alcohol in his system.

¶ 15 On November 24, 2015, the trial court entered a judgment sentencing the defendant to five years' imprisonment to be followed by one year of mandatory supervised release, with credit for time served. Addressing the defendant during his sentencing hearing, the court said:

“[A]lthough you have said here during your statement that there was no basis for this Court to revoke your probation on the basis of alcohol, I do want to remind you, Mr. Baker, that on May 11, 2015, that I personally sentenced you or took a plea at that time when you were placed on 30 months of probation, and one of the terms and conditions of that probation that I told you about here in open court was that you were not to consume any alcohol or illicit drugs and would be subject to random testing at the request of your probation officer or anyone at their direction. And now today you told me that there was nobody that sat down and told you that. And I'm not asking for you to respond, Mr. Baker. But now you're telling me here today nobody told me that. Nobody said I couldn't consume alcohol and that it's legally purchased. Well, it's not legally purchased for you because I told you back on May 11, 2015[,] of this year that you were not to consume that alcohol.”

¶ 16 The defendant subsequently filed a motion to reconsider his sentence and an amended motion to reconsider claiming, *inter alia*, he was not provided with a certificate setting forth the conditions of his probation as required by section 5-6-3(d) of the Unified Code of Corrections (Code) and that he did not understand the terms of his probation

despite the court's oral admonishment. 730 ILCS 5/5-6-3(d) (West 2014). The amended motion to reconsider sentence argued that because of this, the defendant should either be resentenced to probation, his probation should not be revoked, or he should be allowed to withdraw his guilty plea because it was unknowingly entered.

¶ 17 At the hearing on the defendant's amended motion to reconsider sentence, he testified that he did not know about the condition of his probation relating to alcohol. The defendant said he was not able to memorize all of the conditions of his probation as they were read to him during his sentencing hearing and that he did not remember the judge telling him that he was not allowed to consume alcohol. The defendant only remembered that he was not allowed to consume drugs. The defendant contended he was not given a certificate listing the conditions of his probation when he went to the probation office upon his release from the county jail.

¶ 18 Winters testified that when a probationer reports to the probation office after being sentenced to probation, a probation office employee asks the probationer if he or she has a copy of their probation order. If the probationer has a copy of the probation order, the officer schedules an intake appointment. If the probationer does not have a copy of the probation order, however, he or she is sent to the court clerk's office to obtain a copy of the order. Upon his or her return to the probation office with a copy of the probation order, the probationer's intake appointment is scheduled. Winters further stated that at an intake appointment, a probation officer reviews the probation order with the probationer and asks if he or she has any questions. Winters also indicated there is a prescreen

information sheet that explains a probationer's criminal history, present offense, and what he or she can do to avoid further trouble.

¶ 19 According to Winters, the defendant's probation intake appointment took place on May 21, 2015, during which the following occurred. Winters reviewed the probation order with the defendant, and he explained what the defendant was ordered to do "as far as mental health counseling and other things that were marked on his Probation Order." After the defendant advised he had no questions about the probation order, Winters proceeded with the prescreen intake. During his testimony, Winters confirmed he reviewed every single term listed on the probation order with the defendant. Winters's notes indicated that the defendant asked no questions during his intake appointment.

¶ 20 In response to defense counsel's question as to whether he had given the defendant a certificate of the conditions of his probation, Winters admitted he did not. During redirect examination, however, Winters clarified that he never provides a probationer with a copy of the probation order unless it is requested, because "[t]ypically they already have received the copy of the Probation Order from the Clerk's Office."

¶ 21 Also at the hearing on the defendant's motion to reconsider, the State asked the trial court to take judicial notice of its entire file in the defendant's case along with other files involved in the plea agreement, to which the court agreed. The State then directed the court's attention to its docket entry from the date of the defendant's guilty plea and sentencing hearing, May 11, 2015, stating "copies given to Defendant with payment instructions at the Effingham County Jail."

¶ 22 The trial court made several factual findings during its oral ruling on the defendant's motion to reconsider. The court's findings pertinent to the issues presented in this appeal follow.

¶ 23 As to the defendant's claim that he was not given a certificate of probation pursuant to section 5-6-3(d) of the Code, the trial court found the defendant's conditions of probation included a prohibition against alcohol use, that this term was memorialized in his written probation order, and that the defendant received a copy of his written probation order, as indicated by the court's docket entry for May 11, 2015. The court also found the defendant was verbally advised of the conditions of his probation, particularly the requirement that he abstain from alcohol, on two separate occasions including: (1) during his sentencing hearing and (2) during his probation intake meeting with Winters.

¶ 24 The trial court also rejected the defendant's argument that section 5-6-3(d) of the Code required a "certificate" listing his probation conditions in addition to a written probation order. The court found the defendant was adequately advised of the conditions of his probation under section 5-6-3(d) of the Code and *People v. Glover*, 140 Ill. App. 3d 958 (1986), as he received his written probation order and was verbally informed of its terms by the court and Winters.

¶ 25 The trial court then denied the defendant's motion to reconsider orally and by docket entry. On August 11, 2016, the defendant filed a notice of appeal.

¶ 26

II. ANALYSIS

¶ 27 On appeal, the defendant argues the trial court erred in finding that he violated his probation because he was not given a “written certificate of conditions” informing him that he was required to abstain from using alcohol.

¶ 28 The State has the burden of going forward with the evidence and proving a violation of the conditions of probation by a preponderance of the evidence. 730 ILCS 5/5-6-4(c) (West 2014); *People v. Salamon*, 126 Ill. App. 3d 1066, 1070 (1984). Revocation of probation is a matter within the sound discretion of the trial court, and we will not reverse the court’s decision absent a clear showing the revocation was against the manifest weight of the evidence. *Salamon*, 126 Ill. App. 3d at 1070. “A decision is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence presented.” *In re T.J.D.*, 2017 IL App (5th) 170133, ¶ 29. Under this standard, we defer to the trial court as the finder of fact, and we view all the evidence and reasonable inferences therefrom as favorable to the trial court’s judgment. *Id.* Because the trial court is in the best position to determine and weigh the witnesses’ credibility, observe their demeanor, and resolve conflicts in their testimony, a reviewing court will not reverse a trial court’s decision merely because it might have reached a different conclusion from such conflicting evidence. *Id.* ¶¶ 29, 33; *People v. Holman*, 402 Ill. App. 3d 645, 648 (2010).

¶ 29 Pursuant to section 5-6-3(d) of the Code, “[a]n offender sentenced to probation *** shall be given a certificate setting forth the conditions thereof.” 730 ILCS 5/5-6-3(d)

(West 2014). A sentence of probation is an agreement between the probationer and the State, and, in light of the serious consequences imposed if the agreement is broken, it is important that there be an unambiguous, memorialized understanding of what is required of the probationer. *People v. Saucier*, 221 Ill. App. 3d 287, 291-92 (1991). As such, the probationer must be given a probation order or certificate reasonably specifying in writing what mandatory conditions apply to his probation. *Id.* at 292. This is especially necessary in cases where the trial court attaches its own discretionary conditions to the defendant's probation, in addition to the terms and conditions imposed in all sentences of probation. See *id.*

¶ 30 In this case, the defendant argues he was not given a “written certificate of conditions” informing him that he was required to abstain from using alcohol, and thus, his probation cannot be revoked based on a violation of this condition. In support of his position, the defendant relies on *Glover*, *People v. Brown*, and other cases discussing the issue of whether a probation revocation could be based on probation conditions that were not memorialized in a writing given to a probationer. See *Glover*, 140 Ill. App. 3d at 961-62; *People v. Brown*, 137 Ill. App. 3d 453, 454-55 (1985); see also *Saucier*, 221 Ill. App. 3d at 291-94; *People v. Susberry*, 68 Ill. App. 3d 555, 560-62 (1979); *In re Serna*, 67 Ill. App. 3d 406, 407-10 (1978).

¶ 31 In *Brown*, defendant was placed on probation and the sentencing judge orally announced a list of conditions attached to his probation, including that he abstain from the use of alcohol. 137 Ill. App. 3d at 454. The prohibition against defendant's use of alcohol, however, was omitted from the written order of probation. *Id.* After defendant

was later found guilty of violating his probation by failing to abstain from alcohol, the Third District reversed the probation revocation. *Id.* at 454-56. The court held that if a discretionary condition of probation has not been reduced to writing as required by section 5-6-3(d) of the Code, a petition to revoke probation may not be based upon any alleged violation of such a condition. *Id.* at 455.

¶ 32 Subsequently, in *Glover*, the Second District held differently than the Third District in *Brown*. Defendant in *Glover* was charged with violating his probation by violating a criminal law, which is a mandatory statutory condition placed on all sentences of probation. 140 Ill. App. 3d at 959; see also 730 ILCS 5/5-6-3(a)(1) (West 2014). Although defendant had not been specifically informed of the condition in a writing or verbally by the trial court, the court found he had actual knowledge of the condition of his probation. *Glover*, 140 Ill. App. 3d at 959, 961-62. The court further found the certificate requirement of section 5-6-3(c), now section 5-6-3(d), is a salutary requirement that should be followed, but it is not mandatory. *Id.* at 961. Accordingly, the court held that the mere failure of a probationer to receive a certificate of the conditions of his probation will not result in all such terms being null and void if he or she was advised of the probation conditions through some other appropriate method. *Id.* at 962.

¶ 33 The remaining cases cited by the defendant involved similar circumstances to those present in *Brown* and *Glover*, in that either (1) the condition of defendant's probation was not included in the written probation order, (2) defendant was only informed of the condition verbally, or (3) the condition was ambiguous to the point it failed to adequately inform defendant of what was required of him. See *Saucier*, 221 Ill.

App. 3d at 291-94 (probation condition was ambiguous); *Susberry*, 68 Ill. App. 3d at 560 (oral statements of probation conditions were ambiguous); *Serna*, 67 Ill. App. 3d at 407-10 (same).

¶ 34 We find the defendant's reliance on the preceding cases is misplaced because the record reveals the discretionary probation condition that he was found to have violated was reduced to writing as required by section 5-6-3(d) of the Code. The evidence presented in this case established that the defendant was verbally informed of the condition that he was required to abstain from using alcohol by both the trial court and his probation officer. Additionally, the evidence demonstrated the defendant did in fact receive a written probation order informing him of the rules of conduct with which he was required to comply, including the specific condition that he abstain from the use or possession of alcohol. Although the defendant testified that he did not remember being orally advised of the condition and that he was never given a writing reflecting it, we defer to the trial court as the finder of fact, as it was in the best position to weigh the defendant's testimony and resolve conflicts in the evidence presented. See *T.J.D.*, 2017 IL App (5th) 170133, ¶¶ 29, 33; *Holman*, 402 Ill. App. 3d at 648. In light of the foregoing, we conclude that the trial court's finding that the defendant violated the terms and conditions of his probation by testing positive for alcohol is not contrary to the manifest weight of the evidence. See *T.J.D.*, 2017 IL App (5th) 170133, ¶ 29; *Salamon*, 126 Ill. App. 3d at 1070.

¶ 35 With respect to the defendant's argument that the written probation order he received after being sentenced was not sufficient to constitute a "certificate" setting forth

the conditions of his probation as required by section 5-6-3(d) of the Code, we note the Second District of our court has confirmed that where a trial court imposes discretionary conditions upon a sentence of probation, “the probation order *or* certificate must reasonably specify in writing what conduct is expected of the accused.” (Emphasis added.) *Saucier*, 221 Ill. App. 3d at 292 (citing *Brown*, 137 Ill. App. 3d at 455); see also *Susberry*, 68 Ill. App. 3d at 561 (interpreting a prior version of the statute at issue to mean “conditions of probation *** should be spelled out *in the probation order*” (emphasis added)). Thus, the trial court’s finding that the written probation order advising the defendant of the conditions of his probation was sufficient to constitute a “certificate” under section 5-6-3(d) of the Code was not against the manifest weight of the evidence.

¶ 36

III. CONCLUSION

¶ 37 Therefore, we affirm the judgment of the circuit court of Effingham County.

¶ 38 Affirmed.