

Nos. 1-12-2375 and 1-13-0015  
(CONSOLIDATED)

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the  |
|                                      | ) | Circuit Court of |
| Plaintiff-Appellee,                  | ) | Cook County.     |
|                                      | ) |                  |
| v.                                   | ) | No. 10 CR 19894  |
|                                      | ) |                  |
| ROBERT CLARK,                        | ) | Honorable        |
|                                      | ) | Thomas M. Davy,  |
| Defendant-Appellant.                 | ) | Judge Presiding. |

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PRESIDING JUSTICE GORDON delivered the judgment of the court.  
Justices McBride and Taylor concurred in the judgment.

**ORDER**

¶ 1 *Held:* After defendant's probation on two separate felony convictions was revoked, the circuit court erred in imposing consecutive prison sentences without evincing an opinion that the consecutive term was necessary for the protection of the public.

¶ 2 Following revocation of probation on two burglary convictions, defendant Robert Clark was resentenced to two consecutive terms of four years in prison. On appeal, defendant asks us to modify his sentences to concurrent prison terms, contending that the circuit court erred in imposing consecutive sentences without a finding that the consecutive term was necessary for

the protection of the public from further criminal conduct by defendant. Defendant also asks that a corrected total of the monetary penalties imposed by the court be entered. We affirm the revocation of defendant's probation, and remand for the trial court to explain the reasons for the consecutive sentences imposed or to impose concurrent sentences on remand, and direct the clerk to correct the total of monetary penalties imposed.

¶ 3 Defendant was arrested at the scene of a burglary at an elementary school in the early hours of December 11, 2009. On January 15, 2010, defendant pleaded guilty and was sentenced to two years probation and 36 days in the county jail, time considered served, with the provision that he have no contact with the school. Some months later, the State filed a violation of probation (VOP) petition, charging that defendant had failed to report to the probation department after being sentenced, failed to submit to DNA, and owed \$1,200 in probation fees and \$430 in court costs. On October 22, 2010, defendant appeared in court and pleaded guilty to the VOP. He was sentenced to 30 days in the Cook County Department of Corrections, time considered served, and was recommitted to probation.

¶ 4 Five days later, on October 27, defendant was arrested and charged with having committed a burglary at the same elementary school a year earlier, on September 9, 2009.<sup>1</sup> On December 2, 2010, defendant pleaded guilty to that earlier burglary and was sentenced to two years probation with 37 days in jail, time considered served, concurrent with the other burglary case. The court also ordered a TASC evaluation with regular drops and no contact with the school. The sentencing order also contained the notation: "4 + 4 IDOC consec. if VOP"

¶ 5 Subsequently, a VOP petition was filed on both burglary cases, charging that defendant

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<sup>1</sup> The delay in identifying the offender apparently was attributable to time required for analysis of DNA recovered from blood found on a school window sill after discovery of the burglary.

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tested positive for cocaine in January 2011, refused to submit to another testing in February, and failed to submit to an alcohol and drug evaluation. On July 1, 2011, defendant pleaded guilty to VOP and was sentenced to 37 days in the Cook County Department of Corrections, time considered served, and he was recommitted to probation on both charges. At that time the court admonished him: "If there were to be another violation of this probation more likely than not, I would be sentencing you to consecutive sentence which would total 12 years in the Illinois Department of Corrections, do you understand that?" Defendant said he did.

¶ 6 In December 2011, a VOP petition was filed on both cases because in September defendant had tested positive for cocaine and had not reported to the Adult Probation Department in October or November, 2011. On June 1, 2012, a hearing was held on the VOP petition, the basis of which was defendant's failure to report to probation in October 2011. At the conclusion of the hearing, there was a finding of VOP on both cases.

¶ 7 A Presentence Investigation (PSI) report was ordered and distributed at the sentencing hearing on July 6, 2012. The State asked the court to sentence defendant to prison because of his prior criminal history, which included a 1992 burglary conviction, and his current two burglaries. In mitigation, defendant's wife testified in his behalf and submitted to the court letters from family members and neighbors. Defendant's attorney argued in mitigation that defendant has not picked up any new cases and that he "recognizes that his performance on probation has not been exemplary" but that he was trying to do what was right. Defendant spoke in allocution, saying he was sorry for not completing his probation, but he had tried.

¶ 8 The court heard arguments in aggravation and mitigation of sentence and prefaced its resentencing of defendant by noting it had considered both the charges and the content of the

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PSI. The court noted: "The Defendant was given several options when the second case came in. One of them was a four-year sentence to the Illinois Department of Corrections with termination of the first probation or concurrent two years probation with conditions including a TASC evaluation, drops and a promise of a four-plus-four consecutive sentence if there were to be a violation." The court observed that defendant did violate probation, entered a guilty plea to the violation in July 2011, and was recommitted to probation "with options there of a five-year concurrent sentence or six-plus-six consecutive." The court added: "Although, I had promised Mr. Clark a six-plus-six consecutive sentence, I have taken into the account the matters contained in the Pre-sentence Investigation, specifically taking into account the letters submitted from his friends." The court imposed a four-year prison sentence on each of the two burglaries, to run consecutively. Defendant did not move the court to reconsider the consecutive sentences. He filed a separate appeal from each of the burglary convictions, and we have consolidated the appeals.

¶ 9 On appeal, defendant asserts that the imposition of consecutive sentences was improper because the court made no finding that the consecutive term was necessary for the protection of the public and because there was no basis for such a finding. The State responds that defendant has forfeited his challenge to consecutive sentencing by failing to move for reconsideration of the sentence, and that consecutive sentencing was appropriate where it was necessary to protect the public.

¶ 10 In reviewing the appropriateness of a sentence, we must defer to the trial court, which is uniquely qualified to weigh the pertinent sentencing factors. *People v. Stacy*, 193 Ill. 2d 203, 209 (2000). We will not disturb a sentence within the statutory guidelines unless the trial court

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abused its discretion. *People v. Rogers*, 197 Ill. 2d 216, 223 (2001). At the time defendant pleaded guilty to the two underlying burglary offenses, in January and December 2010 respectively, section 5-8-4(c)(1) of the Unified Code of Corrections (Code) provided in pertinent part that a court could impose consecutive sentences "[i]f, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(c)(1) (West 2010). The trial court is not required to recite the specific language of the statute in determining that consecutive sentences are necessary to protect the public. *People v. Cameron*, 2012 ILL App (3d) 110020, ¶ 40, citing *People v. Hicks*, 101 Ill. 2d 366, 375 (1984). However, "[w]hat is required is that the record show that the sentencing court is of the opinion that a consecutive term is necessary for the protection of the public." *Hicks*, 101 Ill. 2d at 375, quoting *People v. Pittman*, 93 Ill. 2d 169, 178 (1982).

¶ 11 In *Cameron*, this court found no indication that the consecutive sentences imposed there were motivated by the trial court's belief that they were required for the protection of the public. *Cameron*, 2012 IL App (3d) 110020, ¶ 41. We reach the same conclusion here. On two prior occasions defendant pleaded guilty to charges in a VOP petition and each time the court recommitted defendant to probation, albeit warning him that he faced prison time for a future violation. Only when defendant was found guilty a third time of violating his probation did the court sentence him to the penitentiary. During the hearing on that last VOP, the court noted that the charge was "not a substantive violation but a technical violation."

¶ 12 Moreover, nothing evident in the record would appear to support the imposition of

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consecutive sentences for burglary. The two burglaries, committed within months of each other in 2009, were Class 1 felonies because the burglarized premises was a school. However, the arrest reports in the record indicate that both burglaries occurred when no school children would have been present. The first burglary occurred between 9 p.m. and 7:15 a.m. and there was no indication defendant possessed a weapon. The second burglary occurred at 3:34 a.m. and defendant was armed only with a screwdriver. Defendant had a prior burglary conviction in 1992 for which he was placed on probation and, following revocation of probation, was sentenced in 1995 to three years in prison. At the time of his resentencing in 2012, the court acknowledged that the basis for defendant's probation violation consisted of merely technical violations, not new criminal charges. The court did not express, nor does the record demonstrate, a need to impose consecutive prison terms to protect the public from further criminal conduct by defendant. However, we will give the trial court the opportunity to explain the reasons for the consecutive sentences imposed or to impose concurrent sentences on remand.

¶ 13 While we recognize defendant did not properly preserve his claim for review because he did not challenge the imposition of consecutive sentences in the trial court, we have refused to apply the forfeiture rule in like cases where a sufficient rationale for the consecutive sentences was not articulated by the court or reflected in the record. See *People v. Span*, 337 Ill. App. 3d 239, 242 (2003), citing *People v. Dorosz*, 217 Ill. App. 3d 1016, 1023 (1991).

¶ 14 Finally, both defendant and the State agree that the order assessing fines, fees and costs against him in case number 10-CR-0633, appellate docket number 1-13-0015, reflects an incorrect total of \$430. The initial total, prior to being offset by a credit of \$180 for time in pre-sentence custody, was inaccurately stated as \$610, due to an error in addition; the correct initial

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total should have been entered as \$560, less the \$180 credit. Under our authority pursuant to Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the order assessing fines, fees and costs to reflect a total of \$380 in penalties imposed.

¶ 15 We find that the trial judge, who is in the best position to review the facts and defendant's background, should be given the opportunity to explain the reasons for the consecutive sentences imposed or impose concurrent sentences on remand. For the foregoing reasons, we affirm the order revoking defendant's probation on both burglary charges and direct the clerk of the circuit court to enter a corrected total of \$380 in monetary penalties imposed in case number 10-CR-0633.

¶ 16 Affirmed in part; modified in part and remanded with instructions.