NO. 4-06-0824   Filed 6/21/07

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Douglas County
BRETT T. KELLEMS,	)	No. 03DT69
Defendant-Appellant.	)	
	)	Honorable
	)	Frank W. Lincoln,
	)	Judge Presiding.

_____

          PRESIDING JUSTICE STEIGMANN delivered the opinion of
the court:

          In January 2004, defendant, Brett T. Kellems, pleaded
guilty to driving under the influence of alcohol (DUI) (625 ILCS
5/11-501 (West 2004)), and the trial court sentenced him to 18
months' court supervision. In July 2005, a probation officer
filed a petition to revoke defendant's supervision. In March
2006, defendant filed a motion to dismiss the petition to revoke
his supervision, arguing that because the probation officer did
not have the authority to file the petition, the court did not
have jurisdiction to entertain it. The court denied defendant's
motion, found that he violated the terms of his supervision, and
entered a judgment of conviction. The court later imposed a $250
fine upon defendant.

          Defendant appeals, arguing that the trial court erred
by denying his motion to dismiss the petition to revoke his

supervision. We agree and reverse.

I. BACKGROUND

As previously stated, in January 2004, defendant
pleaded guilty to DUI, and in February 2004, the trial court
sentenced him to 18 months' court supervision. In July 2005,
Paul Wisovaty, a Douglas County probation officer, filed a
petition to revoke defendant's supervision, alleging that defen-
dant violated two terms of the supervision order. Specifically,
Wisovaty alleged that defendant violated provisions of the
supervision order that prohibited his (1) violating any criminal
statute and (2) consuming any amount of alcoholic beverage.

In March 2006, defendant filed a motion to dismiss the
petition to revoke his supervision on the ground that a probation
officer does not have the authority to file such a petition.
Specifically, defendant asserted that (1) only the Douglas County
State's Attorney had authority to file a petition to revoke
supervision, (2) the July 2005 petition to revoke his supervision
filed by Wisovaty was a nullity, and (3) his period of supervi-
sion expired in August 2005, at which time no petition to revoke
had been filed by the State's Attorney.

In June 2006, the trial court denied defendant's motion
to dismiss. Later, following a hearing on the petition to revoke
defendant's supervision, the court found that defendant violated

the conditions of his order of supervision. The court then

revoked defendant's supervision and entered a judgment of convic-

tion. Following an August 2006 sentencing hearing, the court

imposed a $250 fine on defendant.

This appeal followed.

II. THE TRIAL COURT'S RULING ON DEFENDANT'S MOTION TO DISMISS

Defendant argues that the trial court erred by denying

his motion to dismiss the petition to revoke his supervision.

Specifically, he contends that a probation officer does not have

the authority to file a petition to revoke supervision. We

agree.

Because we are reviewing the trial court's determina-

tion of an issue of law, i.e., whether a probation officer may

file a petition to revoke supervision, our review is de novo.

See People v. Caballes, 221 Ill. 2d 282, 289, 851 N.E.2d 26, 31

(2006) (questions of law are subject to de novo review).

This court is not aware of any Illinois authority

addressing whether a probation officer may file a petition to

revoke supervision. Section 12 of the Probation and Probation

Officers Act (730 ILCS 110/12 (West 2004)), which lists the

duties of a probation officer, does not contain a provision

empowering a probation officer to file a petition to revoke

supervision. In addition, section 5-6-4 of the Unified Code of

Corrections (730 ILCS 5/5-6-4 (West 2004)) is silent as to who

may file a petition to revoke supervision. See People v. Dinger,
136 Ill. 2d 248, 255, 554 N.E.2d 1376, 1378 (1990) (where the
supreme court noted that section 5-6-4 of the Unified Code is
silent regarding who may file a petition to revoke probation but
concluded that the defendant in that case had no authority to do
so; otherwise, the defendant could, at her convenience, burden
the State). Moreover, the State's Attorney's powers and duties
are set forth in section 3-9005 of the Counties Code, which
directs and empowers the State's Attorney to "commence and
prosecute all actions" (55 ILCS 5/3-9005(a)(1) (West 2004)).

Defendant relies, in part, on this court's decision in
People v. Birt, 274 Ill. App. 3d 805, 655 N.E.2d 321 (1995), to
support his contention that a probation officer does not have the
authority to file a petition to revoke supervision. In that
case, the State's Attorney filed a motion to modify the condi-
tions of the defendant's probation. Birt, 274 Ill. App. 3d at
806, 655 N.E.2d at 322. The defendant argued on appeal that
section 5-6-4(f) of the Unified Code (730 ILCS 5/5-6-4(f) (West
1992)) (which explicitly grants the authority to file a petition
to modify probation to the trial court, a defendant, or a proba-
tion officer) does not give the State's Attorney the authority to
file such a motion. Birt, 274 Ill. App. 3d at 807, 655 N.E.2d at
323.

This court rejected the defendant's argument, upon

concluding that because the State's Attorney's authority to file
motions to modify the conditions of probation was so obvious, the
legislature did not deem it necessary to expressly provide that
State's Attorneys are among those who may file a motion under
section 5-6-4(f) of the Unified Code. Birt, 274 Ill. App. 3d at
808, 655 N.E.2d at 323. In so concluding, this court explained
as follows:

> "Instead, the legislature named the entities
> it did--the court, probation officer, or
> defendant--to specify that, in addition to
> the State's Attorney, entities who might
> normally not be thought of as empowered to
> file such a motion may in fact do so." (Em-
> phasis in original.) Birt, 274 Ill. App. 3d
> at 808, 655 N.E.2d at 323.

In rejecting the defendant's argument, this court noted that
section 3-9005 of the Counties Code, which, as noted above,
describes the powers and duties of the State's Attorney, provides
that the State's Attorney shall "'commence and prosecute all
actions, suits, indictments[,] and prosecutions, civil and
criminal, in the circuit court for his county, in which the
people of the State or county may be concerned.'" Birt, 274 Ill.
App. 3d at 808, 655 N.E.2d at 323, quoting 55 ILCS 5/3-9005(a)(1)
(West 1992). We also noted that "[b]ecause a motion to amend

probation constitutes a continuation of a criminal case, the People of the State of Illinois continue to be represented by the State's Attorney in all proceedings concerning such a motion." Birt, 274 Ill. App. 3d at 808, 655 N.E.2d at 323.

The State contends it is not unusual for persons other than the State's Attorney to initiate legal proceedings, with the State's Attorney then prosecuting those proceedings. Examples of such proceedings include traffic complaints filed by police officers and criminal complaints filed by private citizens. See 725 ILCS 5/111-3(b) (West 2004). However, these examples weaken the State's argument because in each instance the legislature has explicitly authorized action that may be taken by persons other than the State's Attorney.

Consistent with our reasoning in Birt, we conclude that if the legislature had intended anyone other than the State's Attorney (whose authority is necessarily implied) to have authority to file a petition to revoke supervision, it could have said so. However, the legislature has not chosen to explicitly empower probation officers with such authority. We thus conclude that Wisovaty lacked authority to file the petition to revoke defendant's supervision, and the trial court lacked authority to consider that petition. Accordingly, we reverse the court's order revoking defendant's supervision.

III. CONCLUSION

For the reasons stated, we reverse the trial court's judgment.

Reversed.

MYERSCOUGH and TURNER, JJ., concur.