2012 IL App (4th) 110674-U

NO. 4-11-0674

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 26, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DEUNDRA M. BLUNT,	)	No. 09CF766
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court substantially complied with Supreme Court Rule 402A prior to accepting defendant's admission to the petition to revoke his probation; and

(2) defendant's VCVA fine is reduced to $4.

¶ 2 Defendant, Deundra M. Blunt, appeals from a judgment revoking his probation and sentencing him to 42 months in prison for his conviction of aggravated battery pursuant to 720 ILCS 5/12-4(b)(8) (West 2008). Defendant contends the trial court failed to substantially comply with the required admonitions of Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003). Defendant also contends the $25 Violent Crime Victim's Assistance Fund assessment (VCVA) (725 ILCS 240/10 (West 2008)) must be reduced to $4. We affirm as modified and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 On June 16, 2009, pursuant to a fully negotiated plea, defendant pleaded guilty to aggravated battery and was sentenced to 24 months' probation. On February 22, 2011, the State filed a petition to revoke defendant's probation, alleging he used cannabis while on probation and wilfully failed to pay his financial obligations as directed. On March 16, 2011, defendant appeared in court on the petition, filed a financial affidavit and the trial court appointed counsel to represent him. The court advised defendant of the allegations in the petition, the potential penalties, and his rights.

¶ 5 On April 19, 2011, defendant appeared with counsel and admitted using cannabis on five separate occasions during his probation and also admitted he wilfully failed to pay the monies he was ordered to pay. There was no agreement as to sentence.

¶ 6 After explaining the allegations in the petition, the trial court admonished defendant as follows:

> "THE COURT: Now, sir, when you come to court and admit to violating your probation, that means you're going to give up some rights. You have an absolute right to a hearing on this petition, and that would be a hearing in front of a judge.
>
> At that hearing the State would have to prove by a preponderance of the evidence that it's more likely true than not true that you violated your probation. At the hearing you would have a right to hear the witnesses testify. You could ask them questions about their testimony through your attorney. That's called cross-examination. You could present witnesses and testimony on your

own behalf.

So you understand the rights you have to a hearing?

THE DEFENDANT: Yes, sir.

THE COURT: And if you admit to the violations, that means we're not going to have a hearing on whether or not your probation should be revoked.

Do you understand that?

THE DEFENDANT: Yes sir.

THE COURT: Now, if your probation is revoked, then we will set this matter for a sentencing hearing. And at that sentencing hearing your penalty range will be for the offense of aggravated battery, that was the offense that put you on probation in the first place. And, as you were told, that's a Class 3 felony. That means you can be sent to prison for not less than two nor more than five years. That would be followed by a period of mandatory supervised release of one year. Your maximum fine could be up to $25,000.

So you understand those would be the maximum penalties?

THE DEFENDANT: Yes, sir.

THE COURT: Now, has anyone forced you or threatened you to get you to come into court today to admit to violating your probation?

THE DEFENDANT: No, sir."

Thereafter, defendant admitted the allegations of the petition and the matter was set over for a sentencing hearing. Defendant was sentenced to 42 months in prison with credit for 48 days previously served. The trial court denied his motion to reconsider his sentence. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant raises two issues on appeal: (1) the adequacy of the admonishments given prior to his admission to the petition to revoke; and (2) the amount of the VCVA assessment imposed.

¶ 9 Defendant first contends the trial court erred when it failed to specifically admonish him about his right to a hearing with defense counsel present, and his right to appoint counsel if he was indigent, as required by Illinois Supreme Court Rule 402A (eff. Nov. 1, 2003). The State urges us to find the court substantially complied with Rule 402A. Our standard of review when the issue is whether the trial court complied with Rule 402A is *de novo*. *People v. Ellis*, 375 Ill. App. 3d 1041, 1046, 874 N.E.2d 980, 983 (2007).

¶ 10 Supreme Court Rule 402A provides, in part, as follows:

> "In proceedings to revoke probation, *** there must be substantial compliance with the following.
>
> **(a) Admonitions to Defendant.** 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." Ill. S. Ct. R. 402A (eff. Nov. 1, 2003).

¶ 11 The rule itself requires only substantial, rather than precise, compliance. The admonishments given by the trial court are set forth earlier in this order. We are entitled to consider the entire record, including the report of earlier proceedings, to decide whether defendant understood his rights under Supreme Court Rule 402A. *People v. Dennis*, 354 Ill. App. 3d 491, 496, 820 N.E.2d 1190, 1194 (2004) (decided prior to application of Rule 402A, but under essentially the same principles as announced in *People v. Hall*, 198 Ill. 2d 173, 760 N.E.2d 971 (2001)).

¶ 12 When defendant appeared in court on March 16, 2011, on the petition to revoke his probation, the trial judge told him, among other things, the following:

> "You also have the right to be represented by an attorney. You can go about that if you choose by hiring your own attorney. If you want to do that but you haven't yet been able to do that, you could ask for a short continuance normally amounting to one to two weeks and in that time you could retain your attorney and return to court.
>
> If you're unable to afford an attorney for yourself and you

ask, there will be an attorney appointed for you free of charge. That would be the Champaign County Public Defender. Ms. Propps[,] on your right-hand side here in the courtroom[,] is a lawyer in the Public Defender's Office. If the Public Defender is appointed, she'll proceed on your behalf today."

¶ 13 At the March 16 hearing, the trial court appointed the public defender and accepted a general denial from the defendant. On April 19, 2011, defendant appeared *with counsel* and, following the extensive admonitions noted earlier, entered an admission to the petition. The matter was then set for hearing.

¶ 14 Defendant contends the trial court failed to substantially comply with Rule 402A, and also claims a violation of due process when the court took his admission without advising him if he was indigent, he had the right to court-appointed counsel. However, defendant, in fact, was given appointed counsel *who appeared with him at the time of the admission*. He was told of his right to appointed counsel on March 16, 2011, and was given counsel at that time. Thus, there was no need to readmonish him of that right at the time of the admission.

¶ 15 As set out above, the trial court, at the time of the admission, told defendant he had an absolute right to a hearing on the petition. Defendant contends the court erred by not telling him he had a right to a hearing "with counsel present." However, counsel was present, both when the matter was set for hearing *and* at the hearing itself. Further, the court made clear defendant's attorney would be present at the hearing when it stated, "you could ask them questions about their testimony through your attorney."

¶ 16 The trial court complied with Supreme Court Rule 402A when admonishing

defendant prior to accepting his admission to the petition to revoke his probation, and defendant suffered no due-process violations.

¶ 17 The defendant was assessed a VCVA fine of $25. Both sides agree it should be reduced to $4 as the total fines were under $40. We agree. The $25 VCVA assessment defendant received is to be imposed only where the defendant is convicted of a crime of violence and no other fine is imposed. 725 ILCS 240/10(c)(1) (West 2008). If other fines are imposed, the penalty is "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). We note this fine is not creditable based on time served. 725 ILCS 240/10(b) (West 2008). Here, defendant was assessed a $5 drug-court fine. Because defendant's fine is less than $40, the VCVA assessment should be $4. Thus, we remand for issuance of an amended sentencing judgment so reflecting.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm as modified and remand with directions for issuance of an amended written sentencing judgment reflecting the reduction of the VCVA fine to $4. Because the State successfully defended a portion of the criminal judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978).

¶ 20 Affirmed as modified and cause remanded with directions.