

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).

2016 IL App (4th) 130513-U
NOs. 4-13-0513, 4-13-0514 cons.
IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 21, 2016
Carla Bender
4th District Appellate
Court, IL

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|--------------------------------------|---|----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| MICHAEL K. ANDERSON, |) | Nos. 11CF514 |
| Defendant-Appellant. |) | 11CF1134 |
| |) | |
| |) | Honorable |
| |) | John Casey Costigan, |
| |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the orders revoking defendant's probation in two burglary cases.

¶ 2 In October 2012, the State filed petitions to revoke the probation of defendant, Michael K. Anderson, in two burglary cases following a criminal indictment for aggravated battery. Defendant admitted the allegations in both petitions to revoke. Subsequently, the trial court revoked defendant's probation in his burglary cases and sentenced him to concurrent four-year prison terms. In July 2015, this court reversed defendant's aggravated-battery conviction and remanded for a new trial. On appeal, defendant argues that the revocations of his probation in the burglary cases must be reversed since the revocations were based solely on the aggravated-battery conviction. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On September 26, 2011, defendant pleaded guilty to burglary (720 ILCS 5/19-1(a) (West 2010)) in McLean County case No. 11-CF-514. In accordance with his plea agreement, the trial court sentenced defendant to 36 months' probation and 180 days in jail. On June 6, 2012, defendant pleaded guilty to a second, unrelated charge of burglary (720 ILCS 5/19-1(a) (West 2010)) in McLean County case No. 11-CF-1134. In accordance with his plea agreement in the second burglary case, the court sentenced defendant to 36 months' Treatment-Alternatives-to-Street-Crime probation and 180 days in jail. Also, as part of the plea agreement in case No. 11-CF-1134, the State agreed to dismiss a pending petition to revoke defendant's probation in case No. 11-CF-514. The terms of defendant's probation in both burglary cases included a condition that he not violate any criminal statute.

¶ 5 On October 10, 2012, the State filed petitions to revoke defendant's probation in both burglary cases, alleging he violated the terms and conditions of his probation in that "[o]n September 12, 2012, the defendant committed the offense of [a]ggravated [b]attery/[p]ublic [p]lace" in McLean County case No. 12-CF-934.

¶ 6 On March 19, 2013, the trial court conducted a hearing on the State's petitions to revoke defendant's probation in the burglary cases. At that time, defendant admitted the allegations in both petitions to revoke. The factual basis for defendant's admissions provided by the State included that "[a]mong the terms and conditions of [defendant's probation] was that he was not to violate any criminal statute of any jurisdiction" and that "[o]n September 12, 2012, the [d]efendant committed the offense of aggravated battery in a public place as alleged in McLean County [case No. 12-CF-934]." The State also noted that "[t]here was a jury trial, and a jury [found] [d]efendant guilty" of aggravated battery. Thereafter, defense counsel acknowledged the State's "allegation [was] true" and that the State "can and has produced witnesses to so testify."

The trial court then accepted defendant's admissions to the petitions to revoke. On April 2, 2013, at a consolidated sentencing hearing, the trial court revoked defendant's probation in both burglary cases and sentenced him to two concurrent four-year prison terms, as well as a concurrent four-year prison term for his aggravated-battery conviction in case No. 12-CF-934.

¶ 7 On July 23, 2015, this court reversed defendant's aggravated-battery conviction in case No. 12-CF-934 and remanded for a new trial. *People v. Anderson*, 2015 IL App (4th) 130515-U. Following our reversal of defendant's aggravated-battery conviction, we allowed the office of the State Appellate Defender to withdraw its pending motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967) in the burglary cases. OSAD then filed a brief on the merits of defendant's probation revocations in both burglary cases. The State has responded.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant asserts that the revocations of his probation in the burglary cases must be reversed since the revocations were based solely on the aggravated-battery conviction that this court reversed. The State agrees we should reverse the revocations of defendant's probation, but it also contends that this court may remand the matter for an evidentiary hearing on the State's petitions to revoke defendant's probation.

¶ 10 Where the issue on appeal does not involve factual or credibility disputes, but is a pure question of law, our review is *de novo*. *People v. Chapman*, 194 Ill. 2d 186, 217, 743 N.E.2d 48, 68 (2000).

¶ 11 At the outset, we note that the record fails to support a critical factual assertion by both parties, *i.e.*, that the basis for the revocations of defendant's probation in the burglary cases was his aggravated-battery *conviction*. To the contrary, the record shows that the trial court

revoked defendant's probation in the burglary cases after he admitted violating the terms and conditions of his probation *by committing* the offense of aggravated battery. Accordingly, the cases cited by defendant and the State in support of their respective arguments, premised on this erroneous assertion, are inapplicable. In particular, in *People v. Hannah*, 31 Ill. App. 3d 1087, 1090, 335 N.E.2d 84, 86-87 (1975), *People v. Lopez*, 72 Ill. App. 3d 713, 717, 391 N.E.2d 105, 108 (1979), and *People v. Contorno*, 322 Ill. App. 3d 177, 178, 750 N.E.2d 290, 293 (2001), the appellate court reversed the revocations of the defendants' respective probation sentences because the sole bases for the probation revocations in those cases were convictions which the courts subsequently reversed. Here, however, the allegation in the petitions to revoke to which defendant admitted was that "[o]n September 12, 2012, the [d]efendant committed the offense of aggravated battery in a public place as alleged in McLean County [case No. 12-CF-934]." Thus, defendant admitted the *commission* of aggravated battery. Because defendant's appeal in this case is based on the faulty premise that his probation sentences were revoked due to his aggravated-battery *conviction*, it must fail. In other words, our reversal of defendant's aggravated-battery conviction did not extinguish the basis for the revocations of his probation in the burglary cases.

¶ 12

III. CONCLUSION

¶ 13 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 14 Affirmed.