

NOTICE

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2016 IL App (4th) 150772-U

NO. 4-15-0772

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 23, 2016

Carla Bender

4th District Appellate

Court, IL

In re: TROY C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	Nos. 13JD138
TROY C.,)	15CF1168
Respondent-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred by applying the wrong standard of proof at the hearing on the State's motion to revoke the stay of respondent's adult criminal sentence.

¶ 2 In August 2013, respondent minor, Troy C., pleaded guilty to aggravated battery as part of an extended jurisdiction juvenile (EJJ) proceeding. The trial court imposed a sentence of five years in prison, to be stayed pending respondent's completion of 36 months of juvenile probation. In September 2015, the State petitioned to revoke the stay of respondent's prison sentence, alleging that respondent had committed burglary. After a hearing later that month, the court granted the State's motion and sentenced respondent to five years in prison.

¶ 3 Respondent appeals, arguing that the trial court applied the wrong standard of proof when granting the State's petition to revoke. We agree and therefore reverse the trial court's judgment and remand for a new hearing.

¶ 4

I. BACKGROUND

¶ 5

We set forth only those facts necessary to reach our decision.

¶ 6

In August 2013, when respondent was 15 years old, the State filed a petition for adjudication of delinquency, alleging that respondent committed armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)), aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)), mob action (720 ILCS 5/25-1(a)(1) (West 2012)), and burglary (720 ILCS 5/19-1(a) (West 2012)). In November 2013, the State petitioned to designate the proceeding as an EJJ proceeding (705 ILCS 405/5-810 (West 2012)).

¶ 7

At a hearing later that month, respondent agreed to designate the proceeding as an EJJ proceeding. At that same hearing, respondent pleaded guilty to aggravated battery, and the State dismissed the other three counts. The trial court imposed a juvenile sentence of 36 months' probation, which included the condition that respondent not violate any criminal statute while on probation. In addition, the court imposed an adult criminal sentence of five years in prison, which the court stayed on the condition that defendant successfully complete his juvenile probation.

¶ 8

In September 2015, the State filed a petition to revoke the stay of respondent's adult criminal sentence. The petition alleged that respondent violated the terms of his juvenile probation by committing burglary (720 ILCS 5/19-1(a) (West 2014)).

¶ 9

Later that month, at a hearing on the State's petition to revoke, the trial court stated the following:

"The purpose of today's hearing is to determine—basically it's a preliminary hearing, probable cause determination to see if the respondent violated the condition of his [EJJ]."

After all the evidence was presented, the court stated the following:

"[I]t's a probable cause determination, and the State has borne that burden. The court finds that the respondent minor did violate the conditions of his [EJJ] and I am going to impose *** a five-year period of incarceration."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Respondent argues that that the trial court applied the wrong standard of proof when granting the State's petition to revoke. We agree.

¶ 13 A. The Trial Court in This Case Applied the Wrong
Standard of Proof

¶ 14 In an EJJ proceeding, after the minor pleads guilty or is found guilty, the trial court imposes both (1) a juvenile sentence and (2) an adult criminal sentence, which is stayed "on the condition that the offender not violate the provisions of the juvenile sentence." 705 ILCS 405/5-810(4)(ii) (West 2012). The following procedure applies when the State later alleges that the minor violated the provisions of his juvenile sentence by committing a new offense:

"When it appears that a minor convicted in an [EJJ prosecution] has violated the conditions of his or her sentence, or is alleged to have committed a new offense upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor. After a hearing, if the court finds *by a preponderance of the evidence* that the minor committed a new offense, the court shall order execution of the previously imposed adult sentence." (Emphasis added.) 705 ILCS 405/5-810(6) (West

2012).

¶ 15 In this case, the trial court explicitly stated that it found probable cause to believe that respondent committed burglary. Under the Juvenile Court Act of 1987, the court should have determined whether it found, by a preponderance of the evidence, that respondent committed burglary. The State concedes that the trial court applied the incorrect standard of proof.

¶ 16 B. The Trial Court's Error Requires Remand for a New Hearing

¶ 17 The State argues that despite the trial court's error in applying the wrong standard of proof, remand for a new hearing is not required. The State urges this court to independently evaluate the evidence and determine that, by a preponderance of the evidence, respondent committed burglary.

¶ 18 In keeping with Illinois Supreme Court case law, we believe the better course is to remand for a new hearing conducted under the proper standard of review—a preponderance of the evidence. See *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004) (remanding for a new best-interests hearing under the preponderance-of-the-evidence standard of proof because the trial court failed to recognize a particular standard of proof in reaching its decision); *In re Enis*, 121 Ill. 2d 124, 134, 520 N.E.2d 362, 367 (1988) (remanding for a new termination-of-parental-rights hearing because the trial court applied the preponderance-of-the-evidence standard instead of the clear-and-convincing-evidence standard). We remand for the trial court to make an independent determination utilizing the correct standard of proof.

¶ 19 We therefore remand for a new hearing on the State's petition to revoke the stay of respondent's adult criminal sentence. At the hearing, the trial court shall determine whether respondent committed burglary by a preponderance of the evidence.

¶ 20

III. CONCLUSION

¶ 21 For the foregoing reasons, we reverse the trial court's judgment and remand with directions.

¶ 22 Reversed; cause remanded with directions.