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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—3332
)	
J.D. N. MOSS,)	Honorable
)	George Bridges,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in revoking defendant's probation; although defendant asserted that his almost complete failure to stay in touch with his probation officer was the result of his employment demands, the revocation was justified by his failure to bring those demands to the attention of his probation officer, his attorney, or the court.

¶ 1 Defendant, J.D. N. Moss, appeals from an order of the circuit court of Lake County revoking his probation for attempted burglary (720 ILCS 5/8—4(a), 19—1(a) (West 2008)), based on his failure to report to the probation department, and sentencing him to two years' imprisonment.

Defendant argues that the court erred in revoking his probation “where there were two conflicting conditions of his probation that could not have been satisfied simultaneously.” We affirm.

¶ 2

I. BACKGROUND

¶ 3 On September 11, 2008, defendant pleaded guilty to attempted burglary and was placed on felony probation. The probation conditions required, *inter alia*, that defendant report to probation as directed and “[o]btain/continue employment and/or attend educational programs, as may be directed by the Probation Officer.” On May 2, 2009, the State petitioned for revocation of defendant’s probation, based on defendant’s failure to report to probation since October 22, 2008.

¶ 4 At the hearing on the petition, probation officer Kevin Johnson testified that, when he first met defendant, he verbally instructed defendant that defendant must meet with him at least once per month. Johnson met with defendant on September 16 and October 22, 2008. The next appointment had been scheduled for December 2. Defendant called Johnson to ask if they could meet at an earlier time on December 2, because defendant was not working that day. The appointment was rescheduled for an earlier time, but defendant did not show up. Johnson did not see defendant again. On February 2, 2009, defendant called and left a message for Johnson, but defendant did not leave a phone number for Johnson to call him back.

¶ 5 Defendant testified that, when he met with Johnson in September, defendant told Johnson that he did not have anywhere to stay and that he did not have a job. Defendant found a job a few weeks after being put on probation. Because he did not have a driver’s license, he rode his bike to work. Defendant called Johnson in December to tell him that “in order to retain the job overtime is mandatory and [he] wouldn’t be able to make it before 6:00.” According to defendant, because Johnson left the office at 5:30 and defendant got off work at 5:30, defendant could not ride his bike

from work and get there on time. On cross-examination, defendant admitted that he never saw Johnson in 2009.

¶ 6 The trial court ruled as follows:

“The Court has had an opportunity to review and consider the evidence introduced during the hearing. The Court also had an opportunity to judge the credibility of the witnesses in this case here. The Court has taken judicial notice of the order of probation and the Court has reviewed the petition to revoke probation.

The order of probation was clear in this case here. The defendant was to report to Court Services, which is the probation department, and he’s to report as directed. The testimony from Mr. Johnson was that when he first met with the defendant that he advised him that he must meet a minimum of once a month. And while it is true Mr. Johnson did not recall a number of factors regarding this case, the order to report was clear and it’s also clear from the evidence that the defendant only met with the probation officer on two occasions. And even assuming he thought that he could meet with him via the telephone, there are only essentially two other opportunities or occasions where [defendant] reportedly attempted to reach the probation officer via the telephone. So there is a number of months in which the defendant was on probation when there was no contact, neither by telephone, nor an attempt to meet him in person.

It is clear that if the defendant is having problems because of employment, arrangements should have been made so that the defendant would not be forced to lose his employment to try and continue to report. That should have been brought to the attention of the probation officer and/or his attorney and/or the Court. That never happened.

I find that the State has established by a preponderance of the evidence that [defendant] failed to report to probation as directed.”

¶ 7 The court revoked defendant’s probation and sentenced him to two years’ imprisonment. Defendant timely appealed.

¶ 8 II. ANALYSIS

¶ 9 We begin by noting that the State had the burden to prove by a preponderance of the evidence that defendant violated a condition of his probation. 730 ILCS 5/5—6—4(c) (West 2008); *People v. Colon*, 225 Ill. 2d 125, 156-57 (2007); *People v. Konwent*, 405 Ill. App. 3d 794, 796 (2010). On review, we must affirm the trial court’s finding that a violation has been proved unless it is against the manifest weight of the evidence. *Colon*, 225 Ill. 2d at 158; *Konwent*, 405 Ill. App. 3d at 796. Here, defendant states in his reply brief that he “does not dispute that he violated a term of his probation.” Indeed, “[a] defendant’s failure to report to his probation officer even once can provide sufficient grounds to revoke probation.” *People v. Jones*, 377 Ill. App. 3d 506, 508 (2007). Instead, defendant argues that the probation revocation must be reversed “where it was impossible for him to satisfy the in-person probation reporting requirement and the requirement that he maintain employment.”

¶ 10 “After finding a violation, a trial court has discretion in deciding whether to revoke probation, and we will not disturb the trial court’s ruling unless it is an abuse of that discretion.” *Jones*, 377 Ill. App. 3d at 508. While not couched in terms of “abuse of discretion,” that is the essence of defendant’s argument. Defendant argues: “In the present case, the court heard testimony at the probation revocation hearing that [defendant’s] place of employment required mandatory overtime, and that the probation office closed before [defendant] would be able to attend

appointments. These facts were highly pertinent to the trial court's decision, and should have been given greater consideration by the trial court."

¶ 11 It is true that "[t]he defendant's culpability is *** highly pertinent to the trial court's exercise of its discretion in deciding whether to revoke defendant's probation." *Konwent*, 405 Ill. App. 3d at 800. Here, however, defendant has failed to establish that the trial court abused its discretion. The trial court did consider the "conflict" between defendant's employment hours and the probation office hours. The court noted that defendant attempted to reach the probation officer by telephone. However, the court noted that defendant did so only twice. Thus, as the court stated, there were "a number of months in which the defendant was on probation when there was no contact, neither by telephone, nor an attempt to meet [Johnson] in person." Indeed, the record established that, but for his two phone calls, defendant was completely out of touch from October 22, 2008, through the time the petition was filed in May 2009. The court emphasized that, if defendant was having problems reporting due to his employment, he should have told Johnson, his attorney, or the court. We agree. As the record demonstrates that the court properly exercised its discretion in deciding to revoke defendant's probation, we affirm.

¶ 12

III. CONCLUSION

¶ 13 Based on the foregoing, we affirm the judgment of the circuit court of Lake County.

¶ 14 Affirmed.