

**NOTICE**

Decision filed 05/16/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 200069-U

NO. 5-20-0069

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Lawrence County.
	)	
v.	)	No. 18-CF-77
	)	
MARK A. EVANS,	)	Honorable
	)	Robert M. Hopkins,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE VAUGHAN delivered the judgment of the court.  
Presiding Justice Boie and Justice Moore concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court had jurisdiction to revoke defendant’s probation because a pending violation of probation petition tolled the probationary period.
- ¶ 2 Defendant appeals from a judgment revoking his probation on his aggravated battery of a peace officer conviction and a sentence of four years’ imprisonment. He argues that the trial court lacked jurisdiction to revoke his probation because the court invalidly extended his probation term without a finding of a violation of probation, there was no pending petition to toll his probationary period, and the petition that revoked his probation was not filed until after his probationary term expired. For the reasons below, we affirm.

¶ 3

## I. BACKGROUND

¶ 4 On August 24, 2018, defendant pled guilty to aggravated battery (720 ILCS 5/12-3.05 (West 2018)). The court accepted the plea and—pursuant to the plea agreement—sentenced defendant to probation for 12 months. The terms of defendant’s probation included that he “shall not have in [his] body the presence of any alcohol, intoxicating compounds or illicit drug prohibited by the Cannabis Control Act (720 ILCS 550/1) or the Illinois Controlled Substance Act (720 ILCS 570/100) \*\*\*,” not violate any criminal statutes of any jurisdiction, and not leave the State of Illinois.

¶ 5 On October 18, 2018, the State filed a violation of probation petition based on an allegation that defendant committed the offense of domestic battery. Because the victim was unwilling to testify, the State later dismissed this petition.

¶ 6 On January 4, 2019, the State filed another violation of probation petition based on defendant’s positive drug tests for amphetamine and methamphetamine in December 2018. A hearing was held on the petition on January 9, 2019. Defendant indicated he wished to admit the violation. After the court admonished defendant as required by *People v. Hall*, 198 Ill. 2d 173, 181 (2001), it found defendant freely and voluntarily admitted the violation and found a violation of probation. Defense counsel asked the court if it was open to residential treatment, as it was only the first positive drug test in this case. The court stated, “That’s fine. So we just need to have an assessment date or an inpatient date documented. We’ll recog [*sic*] him to attend that.” The court then had a discussion with defendant off the record, and subsequently stated:

“There being no objection, the Court will recog [*sic*] the defendant with the following conditions: That he not violate any criminal order or statute; that he report to probation today upon his release; that he not ingest or have in his possession any

alcohol, cannabis, controlled substance, intoxicating compound or methamphetamine; that he be subject to testing through the probation office for those items; that he not leave the State of Illinois; that he do inpatient as soon as possible and that he appear for compliance reviews according to the schedule, the first date being February 19, 2019. That is courtroom B across the hall on those dates, starting with February 19 anytime between 8:30 and 3:30, except the noon hour on those dates.”

The following day, the court entered an appearance bond set at \$20,000 that released defendant on recognizance and directed defendant to appear on March 20, 2019.

¶ 7 Although defendant attended a few compliance reviews, he failed to attend a status hearing on March 20, 2019, and a compliance review on May 7, 2019, which resulted in the issuance of an arrest warrant. After defendant was arrested, the court entered an appearance bond set at \$10,000 that released defendant on recognizance and required him to appear on August 8, 2019. Defendant also failed to attend the August 8, 2019, hearing.

¶ 8 Defendant attended the next hearing on August 21, 2019. At that time, the court noted that it found a violation of probation in January 2019, but its “understanding is that in order to avoid the [original] probation order terminating, even though the PTR’s disposition would still be pending, it’s agreed that we will extend [defendant’s] probation for a few months.” It further stated, “Hopefully we can get [defendant] inpatient and then be in a position at that point to resentence him to probation for a longer period.” The court extended defendant’s probation through December 31, 2019, and again noted that the January 2019 violation of probation petition was still pending.

¶ 9 On September 25, 2019, the State filed an amended violation of probation petition alleging the same as the October 2018 and January 2019 petitions with the additional allegation that

defendant refused to be drug tested at the time of his arrest on September 19, 2019. On October 2, 2020, the court held a hearing on the petition and found defendant violated his probation as alleged. It stated,

“Also, I note for the record that there was a previous petition for violation filed in this case on or about \*\*\* January 4, 2019. \*\*\* [D]efendant admitted that violation and he has never been resentenced on that violation.

So this matter is set for resentencing hearing in both violations.”

¶ 10 On November 20, 2019, after a sentencing hearing, the court imposed a sentence of four years’ imprisonment. Upon defendant’s motion to reconsider revocation of probation and sentence, the court entered an amended sentence of 42 months’ imprisonment. Defendant timely appealed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues that the court lacked jurisdiction to revoke his probation. Issues of jurisdiction are subject to *de novo* review. *People v. Abdullah*, 2019 IL 123492, ¶ 18.

¶ 13 A court’s subject-matter jurisdiction over a defendant on probation coexists with the probationary term. *People v. Clark*, 2019 IL 122891, ¶ 53. Once the probationary term has expired, probation is terminated, and the court has no authority to revoke probation even for an offense committed within the term of probation. *Id.*

¶ 14 Personal service of a petition for violation of probation, however, “toll[s] the period of probation \*\*\* until the final determination of the charge, and the term of probation \*\*\* shall not run until the hearing and disposition of the petition for violation.” 730 ILCS 5/5-6-4(a) (West 2018). The purpose of the tolling provision is to retain the court’s jurisdiction and ensure a term of probation does not expire prior to a hearing on a petition to revoke filed within the probationary term. *People v. Goodman*, 102 Ill. 2d 18, 21-22 (1984). Although defendant’s original term of

probation may expire before the hearing on a petition to revoke, defendant remains subject to the terms of his probation during the tolled period. *Id.* at 21. *People v. Green*, 91 Ill. App. 3d 127, 129-30 (1980).

¶ 15 The petition upon which the court revoked defendant's probation here was filed outside of defendant's original probationary term. The parties dispute whether the January 2019 petition was still pending such that defendant's probation was tolled until the court revoked his probation in November 2019.

¶ 16 To resolve this dispute, we must determine whether the court entered a disposition on the January 2019 petition before the State filed the September 2019 petition. See 730 ILCS 5/5-6-4(a) (West 2018) (after the personal service of a violation of probation petition begins tolling defendant's probation, "the term of probation \*\*\* shall not run until the hearing *and disposition* of the petition for violation" (emphasis added)). In criminal proceedings, a disposition is the sentence imposed by the court. *Id.* § 5-1-19. As such, a court enters a disposition of a violation of probation petition when it imposes its sentence on the petition. See *People v. Johnson*, 265 Ill. App. 3d 509, 511 (1994).

¶ 17 After defendant admitted the allegations in the January 2019 petition and the court found a violation of probation, the court neither imposed a particular sentence nor stated anything concerning the duration of defendant's probation. Instead, upon counsel's request, the court released defendant on a recognizance bond so he could complete inpatient treatment as soon as possible. There was no indication that allowing defendant to complete inpatient treatment was a modification or addition to defendant's original probation. To the contrary, the court's statements at the hearing and docket entry support the conclusion that inpatient treatment and compliance reviews were conditions of defendant's bond. Such conclusion is also evinced by the imposition

of other bond conditions—such as not violating any criminal statute or leaving the state—which were already conditions of defendant’s probation. The court therefore did not enter disposition on the January 2019 petition at that time.

¶ 18 The court’s later extension of defendant’s probation based on agreement of the parties also does not indicate that a disposition was entered on the January 2019 petition prior to the State’s filing of the September 2019 petition. Before the court entered the extension, it noted that the January 2019 petition remained pending. It nevertheless entered an extension based on its mistaken belief that it would lose jurisdiction over defendant’s probation. Any such agreement to extend defendant’s probation, however, would be superfluous because, as explained above, the pending January 2019 petition tolled defendant’s probation—and therefore the court’s jurisdiction—until a disposition was entered on that petition.

¶ 19 It was not until the November 20, 2019, sentencing hearing that the court entered a new sentence in defendant’s case. In its pronouncement of that sentence, the court explained that the new imposition of imprisonment was based on both the January 2019 and September 2019 petitions.

¶ 20 There were other hearings between January 9, 2019, and November 20, 2019. Yet—besides the August 21, 2019, hearing transcript that provides no support for defendant’s position—defendant failed to present the report of proceedings for those hearings on appeal. Consequently, we do not know what occurred at those hearings. Any doubts arising from the incompleteness of the record is resolved against defendant, and we “presume[ ] that the order entered by the trial court was in conformity with law.” *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 21 Under the facts of this case, we find the court did not enter a disposition on the January 2019 petition until November 20, 2019.<sup>1</sup> The January 2019 petition was therefore pending at the time the State filed an amended violation of probation petition in September 2019, and the court had jurisdiction over such petition. Because we find the pending January 2019 petition tolled defendant's probation such that the court had jurisdiction to revoke probation after the original term, we need not determine defendant's second asserted issue of whether the court could extend defendant's probation upon agreement of the parties without *Hall* admonishments.

¶ 22 III. CONCLUSION

¶ 23 The trial court had jurisdiction to revoke defendant's probation and resentence him. Accordingly, we affirm.

¶ 24 Affirmed.

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<sup>1</sup>Defendant does not challenge the validity of the 10-month delay in sentencing on the January 2019 petition. Nevertheless, we note—in light of the defendant's request for inpatient treatment, continuous hearings between the two dates, and defendant's acquiescence to the delay in sentencing—such delay was reasonable and did not prejudice defendant. See *People ex rel. Houston v. Frye*, 35 Ill. 2d 591, 594 (1966).