

2011 IL App (2d) 100260-U
No. 2-10-0260
Order filed October 26, 2011

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 01-CF-2570
)	
JACKUELINE BUTLER-HOBBS,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: The trial court had jurisdiction to revoke defendant's probation, as the probation period had not lapsed but had been extended by the pendency of the State's petition to revoke, which despite defendant's assertion the court had not denied before the revocation; the court had merely continued the petition so that defendant would have opportunities to satisfy her financial obligations.

¶ 1 Defendant, Jackueline Butler-Hobbs, appeals from the revocation of her probation. She makes one claim of error: that the revocation of her probation was void because it happened after her probation was over. She asserts that the court had already effectively denied the State's petition for revocation, allowing the probation period to lapse. We hold that the court did not dispose of the

petition until it revoked her probation and that it therefore had jurisdiction for the revocation. We therefore affirm.

¶ 2

I. BACKGROUND

¶ 3 A grand jury indicted defendant on two counts of forgery (720 ILCS 5/17-3(a)(1), (a)(2) (West 2000)). On November 26, 2001, she entered a guilty plea to one count (720 ILCS 5/17-3(a)(1)), and the court sentenced her to 24 months' probation including 120 days in jail and \$612.90 restitution to Oak Brook Bank.

¶ 4 On April 10, 2003, the State filed a petition to revoke her probation on the basis that she had failed to report on four dates, had failed to obtain an ordered drug evaluation, and had once tested positive for cocaine. The court granted the petition and, on December 4, 2003, sentenced her to a new 30 months of probation. It left the restitution intact. Other conditions included a further 180 days in jail, with release only for residential treatment, and thereafter release to a halfway house.

¶ 5 On July 5, 2005, defendant filed a document in which she stated that she had received drug treatment through Lake County, had continued to test negative for all drugs, and was completing Lake County work release. She said that, on this basis, the sentence of jail, treatment, and halfway house did not fit the objectives for which it had been designed.

¶ 6 On July 7, 2005, the court vacated the 180-day jail sentence.

¶ 7 On January 23, 2006, the State filed a second petition to revoke. It alleged a willful failure to pay a fine and court costs and "to complete treatment program in halfway house." After defendant argued that the July 7, 2005, order had also been intended to free her of the halfway-house requirement, the court, with a new judge, said that it would check the record and consult with the previous judge.

¶ 8 On May 18, 2006, the court had another status date. Kevin Fleming, her probation officer, reported that defendant had complied with all the conditions other than the financial conditions; he specifically said that all drug treatment issues had been resolved. Fleming said that defendant owed \$1,350 in probation fees and \$350 in fines and costs. Defendant said that most of her money had been going to pay similar obligations in Lake County, but that she thought she could pay \$50 a month. The court said “Let’s see how you do on your fines and costs, and I’ll entertain your motion to waive some of the probation fees.” Defendant said “Okay.” The court then asked, “Everything else is done?” Fleming said “Yes.” The court further asked, “It’s only financial at this point?” Fleming again agreed. The court then said “8/31 at 9 for payment of fines and costs. *** See you on August 31, and we’ll see how you are doing.” Whoever prepared the order checked a “Speedy Trial Tolled” box.

¶ 9 On August 31, 2006, defendant did not appear, but Fleming said that defendant had made one \$50 payment and that her financial situation was “pretty stressful for her right now.” He further said: “[S]he’s been off for some time. The treatment and everything is done. It’s just an issue of the financial piece right now.”

¶ 10 The court continued to set new status dates. On December 6, 2007, the State filed a new petition to revoke defendant’s probation. It alleged that defendant had failed to pay a fine of \$1,640 and restitution of \$332.90. It also alleged that defendant had failed to report to the probation department and had missed a court date. On December 13, 2007, defendant orally responded, telling the court that she thought that her probation was over and that all that remained was the civil matter of the financial conditions. On January 17, 2008, with defendant present and testifying, the court found that defendant had violated the terms of her probation. The public defender, whom the court

had appointed on the spot, represented defendant at the hearing. The court set February 28, 2008, as the date for sentencing. Defendant did not appear.

¶ 11 On October 14, 2009, defendant filed by mail a document captioned as a “Petition for Writ of Habeas Corpus.” In it, she requested a “Speedy Court date.”

¶ 12 On October 22, 2009, the court set a date of November 5, 2009, defendant “to be writ in”; defendant was in the Cook County Correctional Center. On December 10, 2009, the court sentenced defendant to 30 months’ imprisonment and one year of MSR. Defendant filed a motion to reconsider the sentence in which she asserted that the offense for which the court had revoked her probation had not occurred within the term of probation and that the court was therefore without jurisdiction to impose the sentence. The court denied the motion on January 26, 2010. Defendant sought leave to file a late notice of appeal, which this court granted.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues that her 30-month sentence of probation expired on October 4, 2006,¹ so that, on January 17, 2008, when the court revoked her probation, it lacked the necessary

¹The reason that defendant concludes that her probation ended on October 4, 2006, not June 3, 2006, is that she deems that the time of a petition to revoke’s pendency is added to the existing term of probation when a court denies a petition to revoke. She bases this reasoning on section 5-6-4(a) of the Unified Code of Corrections (730 ILCS 5/5-6-4(a) (West 2000)), which states that “[p]ersonal service of the petition for violation of probation *** shall toll 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.” The date on which her probation would have terminated had the trial court, on May 18, 2006, denied the petition to revoke is of no import here,

jurisdiction. She agrees that the term could not end while the State's January 19, 2006, petition to revoke was pending. However, she argues that the court denied the petition on May 18, 2006, when it heard that the only conditions that were not satisfied were the financial ones.

¶ 15 The State responds that the court did not deny the petition on May 18, 2006, but simply continued the matter repeatedly to give defendant more time to pay.

¶ 16 We agree with the State. Nothing in the record suggests that the court denied or otherwise disposed of the petition to revoke until January 17, 2008, when it granted an amended petition. Although the court apparently treated as baseless the State's allegations that defendant had violated nonmonetary terms of her probation, it did not (until January 17, 2008) make a finding concerning the willfulness of her nonpayment. Moreover, it did not, until it granted the State's amended petition, enter any dispositional order. We therefore conclude that the court retained jurisdiction to revoke probation for the entire relevant period, and the revocation of probation was not void due to loss of jurisdiction.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the revocation of defendant's probation.

¶ 19 Affirmed.

and we need not decide whether her interpretation of this provision is correct.